

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No.456 of 2009

AGAINST THE ORDER IN ITA 180/COCH/2000 DATED 31.10.2003
OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
[ASSESSMENT YEAR 1996-97]

APPELLANT/APPELLANT:

M/S.DHANALAKSHMI BANK LTD.,
TRICHUR

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.MOHAN PULIKKAL
SRI.P.P.NARAYANAN

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
COCHIN.

BY ADVS.
SRI.P.K.R.MENON, SENIOR COUNSEL, GOI(TAXES)
SRI.JOSE JOSEPH, SC FOR INCOME TAX.

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
11.12.2018, ALONG WITH ITA.98/2012, ITA.116/2012, ITA.126/2012,
ITA.148/2012, ITA.498/2009, ITA.635/2009, ITA.643/2009,
ITA.651/2009, ITA.712/2009, ITA.717/2009, ITA.1108/2009,
ITA.1318/2009, ITA.1691/2009, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

I.T.A.No.98 of 2012

AGAINST THE ORDER IN ITA 93/COCH/2009 DATED 30-12-2011
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 2005-06]

APPELLANT/APPELLANT:

THE DHANALAKSHMI BANK LTD.,
NAICKANAL, TRICHUR -680001.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.K.C.KIRAN
SRI.MOHAN PULIKKAL

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
AAYAKAR BHAVAN, SAKTHAN THAMPURAN NAGAR,
TRICHUR-680001.

BY ADVS.
SRI.P.K.R.MENON, SR.COUNSEL, GOI (TAXES)
SRI.JOSE JOSEPH, SC FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
11.12.2018, ALONG WITH ITA.148/2012, ITA.126/2012, ITA.116/2012,
ITA.1691/2009, ITA.1318/2009, ITA.1108/2009, ITA.717/2009,
ITA.712/2009, ITA.651/2009, ITA.643/2009, ITA.635/2009,
ITA.498/2009, ITA.456/2009, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

ITA.No.456 of 2009 &
connected cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No.116 of 2012

AGAINST THE ORDER IN ITA 94/COCH/2009 DATED 30-12-2011
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 2006-07]

APPELLANT/APPELLANT:

THE DHANALAKSHMI BANK LTD.,
NAICKANAL, TRICHUR-681001.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.MOHAN PULIKKAL

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
AAYAKAR BHAVAN, S.T. NAGAR, TRICHUR-681001.

BY ADVS.
SRI.P.K.R.MENON, SR.COUNSEL, GOI (TAXES)
SRI.JOSE JOSEPH, SC FOR INCOME TAX.

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
11.12.2018, ALONG WITH ITA.148/2012, ITA.126/2012, ITA.98/2012,
ITA.1691/2009, ITA.1318/2009, ITA.1108/2009, ITA.717/2009,
ITA.712/2009, ITA.651/2009, ITA.643/2009, ITA.635/2009,
ITA.498/2009, ITA.456/2009, THE COURT ON THE SAME DAY
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

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THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No. 126 of 2012

AGAINST THE ORDER IN ITA.133/COCH/2009 DATED 30-12-2011
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 2006-07]

APPELLANT/RESPONDENT:

THE DHANALAKSHMI BANK LTD.,
NAICKANAL, TRICHUR - 681 001.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.MOHAN PULIKKAL

RESPONDENT/APPELLANT:

THE COMMISSIONER OF INCOME TAX,
AAYAKAR BHAVAN, S.T.NAGAR, TRICHUR - 681 001.

BY ADVS.
SRI.P.K.R.MENON, SR.COUNSEL, GOI (TAXES)
SRI.JOSE JOSEPH, SC FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
11.12.2018, ALONG WITH ITA.148/2012, ITA.116/2012, ITA.98/2012,
ITA.1691/2009, ITA.1318/2009, ITA.1108/2009, ITA.717/2009,
ITA.712/2009, ITA.651/2009, ITA.643/2009, ITA.635/2009,
ITA.498/2009, ITA.456/2009, THE COURT ON THE SAME DAY
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No.148 of 2012

AGAINST THE ORDER IN ITA.132/COCH/2009 DATED 30-12-2011
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 2005-06]

APPELLANT/RESPONDENT:

THE DHANALAKSHMI BANK LTD.,
NAICKANAL TRICHUR-681001.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.MOHAN PULIKKAL
SRI.P.P.NARAYANAN

RESPONDENT/APPELLANT:

THE COMMISSIONER OF INCOME TAX,
AAYAKAR BHAVAN, S.T. NAGAR, TRICHUR - 681001.

BY ADVS.
SRI.JOSE JOSEPH, SC FOR INCOME TAX
SRI.P.K.R.MENON, SR.COUNSEL, GOI (TAXES)

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ITA.498/2009, ITA.456/2009, THE COURT ON THE SAME DAY
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THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No.498 of 2009

AGAINST THE ORDER IN ITA.336/COCH/2006 DATED 20-08-2007
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 2003-04]

APPELLANT/APPELLANT/ASSESSEE:

M/S.DHANALAKSHMI BANK LTD.,
TRICHUR.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.K.C.KIRAN
SRI.MOHAN PULIKKAL
SRI.P.P.NARAYANAN

RESPONDENT/RESPONDENT/REVENUE:

THE COMMISSIONER OF INCOME TAX,
TRICHUR.

BY ADV. SRI.JOSE JOSEPH, SC FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
11.12.2018, ALONG WITH ITA.148/2012, ITA.126/2012, ITA.116/2012,
ITA.98/2012, ITA.1691/2009, ITA.1318/2009, ITA.1108/2009,
ITA.717/2009, ITA.712/2009, ITA.651/2009, ITA.643/2009,
ITA.635/2009, ITA.456/2009, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No.635 of 2009

AGAINST THE ORDER IN ITA.337/COCH/2006 DATED 20-08-2007
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 2004-05]

APPELLANT/APPELLANT:

M/S.DHANALAKSHMI BANK LTD.,
TRICHUR.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.K.C.KIRAN
SRI.MOHAN PULIKKAL
SRI.P.P.NARAYANAN

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
TRICHUR.

BY ADV. SRI.JOSE JOSEPH, SC FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 11.12.2018,
ALONG WITH ITA.148/2012, ITA.126/2012, ITA.116/2012, ITA.98/2012,
ITA.1691/2009, ITA.1318/2009, ITA.1108/2009, ITA.717/2009,
ITA.712/2009, ITA.651/2009, ITA.643/2009, ITA.498/2009,
ITA.456/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No.643 of 2009

AGAINST THE ORDER IN ITA.165/COCH/2004 DATED 19-09-2005
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 1996-97]

APPELLANT/APPELLANT:

M/S.DHANALAKSHMI BANK LTD.,
TRICHUR.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.MOHAN PULIKKAL

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
TRICHUR.

BY ADV. SRI.JOSE JOSEPH, SC FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
11.12.2018, ALONG WITH ITA.148/2012, ITA.126/2012, ITA.116/2012,
ITA.98/2012, ITA.1691/2009, ITA.1318/2009, ITA.1108/2009,
ITA.717/2009, ITA.712/2009, ITA.651/2009, ITA.635/2009,
ITA.498/2009, ITA.456/2009, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No.651 of 2009

AGAINST THE ORDER IN ITA.1197/COCH/2004 DATED 29-12-2006
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 1998-99]

APPELLANT/APPELLANT:

M/S.DHANALAKSHMI BANK LTD.,
TRICHUR.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.K.C.KIRAN
SRI.MOHAN PULIKKAL
SRI.P.P.NARAYANAN

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
TRICHUR.

BY ADV. SRI.JOSE JOSEPH, SC FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
11.12.2018, ALONG WITH ITA.148/2012, ITA.126/2012, ITA.116/2012,
ITA.98/2012, ITA.1691/2009, ITA.1318/2009, ITA.1108/2009,
ITA.717/2009, ITA.712/2009, ITA.643/2009, ITA.635/2009,
ITA.498/2009, ITA.456/2009, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

ITA.No.456 of 2009 & - 10 -
connected cases

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No.712 of 2009

AGAINST THE ORDER IN ITA.1198/COCH/2004 DATED 29-12-2006
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 2001-02]

APPELLANT/APPELLANT:

THE DHANALAKSHMI BANK LTD.,
TRICHUR.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.K.C.KIRAN
SRI.MOHAN PULIKKAL
SRI.P.P.NARAYANAN

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
TRICHUR.

BY ADV. SRI.JOSE JOSEPH, SC FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
11.12.2018, ALONG WITH ITA.148/2012, ITA.126/2012, ITA.116/2012,
ITA.98/2012, ITA.1691/2009, ITA.1318/2009, ITA.1108/2009,
ITA.717/2009, ITA.651/2009, ITA.643/2009, ITA.635/2009,
ITA.498/2009, ITA.456/2009, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No.717 of 2009

AGAINST THE ORDER IN ITA.949/COCH/2004 DATED 28-07-2006
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 2000-01]

APPELLANT/APPELLANT:

THE DHANALAKSHMI BANK LTD.,
TRICHUR.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.K.C.KIRAN
SRI.MOHAN PULIKKAL
SRI.NARAYANAN POTTI

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
TRICHUR.

BY ADV. SRI.JOSE JOSEPH, SC FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
11.12.2018, ALONG WITH ITA.148/2012, ITA.126/2012, ITA.116/2012,
ITA.98/2012, ITA.1691/2009, ITA.1318/2009, ITA.1108/2009,
ITA.712/2009, ITA.651/2009, ITA.643/2009, ITA.635/2009,
ITA.498/2009, ITA.456/2009, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

ITA.No.456 of 2009 & - 12 -
connected cases

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No.1108 of 2009

AGAINST THE ORDER IN ITA.72/COCH/2001 DATED 11-08-2006
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 1997-98]

APPELLANT/APPELLANT:

M/S.DHANALAKSHMI BANK LTD.,
TRICHUR.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.K.C.KIRAN
SRI.MOHAN PULIKKAL
SRI.P.P.NARAYANAN

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
TRICHUR.

BY ADV. SRI.JOSE JOSEPH, SC FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
11.12.2018, ALONG WITH ITA.148/2012, ITA.126/2012, ITA.116/2012,
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ITA.712/2009, ITA.651/2009, ITA.643/2009, ITA.635/2009,
ITA.498/2009, ITA.456/2009, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No.1318 of 2009

AGAINST THE ORDER IN ITA.30/COCH/2006 DATED 10-01-2008
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 2002-03]

APPELLANT/APPELLANT:

M/S.DHANALAKSHMI BANK LTD.,
TRICHUR.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.MOHAN PULIKKAL
SRI.P.P.NARAYANAN

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
TRICHUR.

BY ADVS.
SRI.P.K.R.MENON, SENIOR COUNSEL, GOI (TAXES)
SRI.JOSE JOSEPH SC FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
11.12.2018, ALONG WITH ITA.148/2012, ITA.126/2012, ITA.116/2012,
ITA.98/2012, ITA.1691/2009, ITA.1108/2009, ITA.717/2009,
ITA.712/2009, ITA.651/2009, ITA.643/2009, ITA.635/2009,
ITA.498/2009, ITA.456/2009, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

ITA.No. 1691 of 2009

AGAINST THE ORDER IN ITA.602/COCH/2006 DATED 16-03-2009
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
[ASSESSMENT YEAR 1999-2000]

APPELLANT/APPELLANT:

THE DHANALAKSHMI BANK LTD.,
TRICHUR.

BY ADVS.
SRI.P.BALAKRISHNAN (E)
SRI.MOHAN PULIKKAL
SRI.NARAYANAN POTTI

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
TRICHUR.

BY ADV. SRI.JOSE JOSEPH, SC FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 11.12.2018,
ALONG WITH ITA.148/2012, ITA.126/2012, ITA.116/2012, ITA.98/2012,
ITA.1318/2009, ITA.1108/2009, ITA.717/2009, ITA.712/2009,
ITA.651/2009, ITA.643/2009, ITA.635/2009, ITA.498/2009,
ITA.456/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

[I.T.A.456/2009, I.T.A.1108/2009, I.T.A.116/2012,
I.T.A.126/2012, I.T.A.1318/2009, I.T.A.148/2012,
I.T.A.1691/2009, I.T.A.498/2009, I.T.A.635/2009,
I.T.A.643/2009, I.T.A.651/2009, I.T.A.712/2009,
I.T.A.717/2009 & I.T.A.98/2012]

Vinod Chandran, J.

The issues arising in the above appeals for the assessment years 1996-97 to 2006-07 are, in certain of the years, common. There are also more than one appeal filed in two years, i.e., in 1996-97 and 2006-07 two appeals each. In 1996-97, the two appeals [I.T.A.Nos.456 & 643 of 2009] arise; one from the order of assessment under Section 143(3) of the Income Tax Act, 1961 [for brevity "the Act"] and the other from an assessment carried out under Section 143 read with Section 263 of the Act. In the year 2006-07, there are two appeals [I.T.A.Nos.126 & 116 of 2012]; one from the order of the Tribunal rejecting the appeal of the Department and the other from the order of the Tribunal allowing the appeal of the assessee.

2. In the years 1997-98 [I.T.A.No.1108/2009], 1998-99 [I.T.A.No.651/2009], 1999-2000 [I.T.A.No.1691/2009] and 2000-01 [I.T.A.No.717/2009] one of the questions is with respect to the dis-allowance of bad debts written off under Section 36(1)(vii). The specific contention of the assessee

was that having debited the sums in the separate assessment years, in the P&L account and netted the same from the total advances outstanding in the balance sheet, there is a complete write off and there is no warrant to look into whether there has been a credit made to the specific account. The assessee had raised the contention before the Assessing Officer [for brevity "AO"] on the basis of a decision of the Gujarat High Court in Vithaldas H.Dhanjibhai Bardanwala v. C.I.T. [(1981) 130 ITR 95 (Guj.)]. We have in I.T.A.No.264 of 2009 [South Indian Bank Ltd. v. CIT] vide common judgment dated 04.12.2018, already found the issue against the assessee and in favour of the Revenue. This Court had also noticed the decision of the Hon'ble Supreme Court in Southern Technologies Ltd. v. Joint CIT [(2010) 320 ITR 577], wherein the Gujarat High Court decision was reversed. Hence, this question for all these years has to be answered in favour of the Revenue and against the assessee.

3. In the years 2001-02 [I.T.A.No.712/2009], 2005-06 [I.T.A.No.98/2012] and 2006-07 [I.T.A.No.116/2012], a common question is raised of the disallowance of expenditure incurred under Section 14A. The said issue has been answered in favour of the assessee and against the Revenue by the Hon'ble Supreme Court in Commissioner of Income Tax v. Essar

Teleholdings Ltd. [(2018) 401 ITR 445]. The Hon'ble Supreme Court had categorically held that Section 14A would be applicable only from the year 2007-08. In the present appeals arising from the prior years, the dis-allowance made by the AO under Section 14A as affirmed by the Tribunal, has to be set aside. The question is answered in favour of the assessee and against the Revenue.

4. In the year 2006-07 [I.T.A.No.116/2012], there is one other issue raised of levy of interest under Section 234B. The question has already been answered in favour of the Revenue and against the assessee in South Indian Bank Ltd. v. CIT [(2010) 325 ITR 517 (Ker.)]. The question, hence, stands answered against the assessee and in favour of the Revenue.

5. In I.T.A.No.126 of 2012, a further issue arising for the year 2006-07 is the dis-allowance of provision for leave encashment under Section 43B(f), Section 43B spoke of certain deductions only on actual payment. Sub-clause (f) is with respect to any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee. The deduction, hence, is allowable only on actual payment. It is submitted that the Calcutta High Court has struck down the said provision. Admittedly a Special Leave Petition was filed before the Hon'ble Supreme Court and there is also a stay

order granted. In such circumstances, the provision applies and this Court has also in a similar case answered the question in favour of the Revenue and against the assessee in South Indian Bank Ltd. v. CIT [(2014) 363 ITR 111 (Ker)]. The said question is also answered against the assessee and in favour of the Revenue, affirming the order of the Tribunal to that extent.

6. For the years 2005-06 and 2006-07 in I.T.A.Nos.148 of 2012 and 126 of 2012, there is a question of dis-allowance of bad debts of non-rural Banks written off under Section 36(1)(vii). The AO declined the same. The Tribunal relied on a Full Bench decision of this Court in Commissioner of Income Tax v. The South Indian Bank Ltd. [(2010) 326 ITR 174 (Ker)] to uphold the dis-allowance. However, the Hon'ble Supreme Court reversed the Full Bench decision of this Court in Catholic Syrian Bank Ltd. v. Commissioner of Income Tax [(2012) 343 ITR 270 (SC)]. In considering the allowance of deduction of actual written off debts under sub-clause (vii) of Section 36(1) with respect to urban bad debts as distinguished from rural bad debts, for which provision is allowable under sub-clause (viia), the same cannot be with reference to the provision under sub-clause (viia). The write off of non-rural bad debts under

sub-clause (vii) has been found by the Hon'ble Supreme Court to be independent of the provision for rural bad debts made under sub-clause (viia). In such circumstances, the question has to be answered in favour of the assessee and against the Revenue, with only reservation as to examination of whether any provision for non-rural bad debts has been granted deduction in the previous assessment year. If there is a deduction allowed for provision for non-rural bad debts, then necessarily the allowance for write off has to be only that in excess of the deduction granted for the provision. We make it clear that what we have directed the AO to examine is only as to whether there is an allowance granted for provision of non-rural bad debts in the earlier assessment year; without any reference to the rural bad debts, the provision for which has been granted deduction under sub-clause (viia).

7. The next question arising in the maximum number of appeals, i.e., for the years 1996-97 to 2005-06; 10 years, is the question of deduction under Section 35D of the Act. The question framed is as below:

"Whether the Tribunal was correct in having declined amortisation of expenses incurred in connection with the issue of public subscription of shares under Section 35D for reason of the assessee being not an 'industrial undertaking'?"

8. In this context, we have to first notice that by Finance Act, 2008 with effect from 01.04.2009 there was an amendment of Section 35D by Section 8 of the Finance Act, which reads as under:

"8. Amendment of Section 35-D.- In Section 35-D of the Income Tax Act, with effect from the 1st day of April, 2009,-

(a) for the words "industrial undertaking", wherever they occur, the word "undertaking" shall be substituted;

(b) for the words "industrial unit", wherever they occur, the word "unit" shall be substituted."

The learned Counsel appearing for the appellant would contend that there being a substitution, the amendment would have to be deemed to be retrospective. The judgment of a Division Bench of this Court in Commercial Tax Officer v. Najeem [2018 (3) KLT 877] is also put forth. It is argued that this Court had found that when there is a substitution, if it is not specifically expressed to be prospective, then "the Courts could always interpret it to be retrospective, looking at the scheme of the enactment, the purpose and object of the amendment, especially when the amendment by substitution, was intended at removing an obvious anomaly or correcting a blatant error or obliterating an absurdity or bringing it in consonance with any other law or the Constitution...". Hence,

the intention definitely was to extend the benefit to all undertakings.

9. The learned Standing Counsel for Government of India (Taxes), however, takes us through the Notes on Clauses of Finance Bill, 2008 and the Memorandum Explaining the Provisions in the Finance Bill, 2008. Clause 6 in the Notes on Clauses seeking to amend Section 35D specifically says so:

"The proposed amendment seeks to substitute the words "industrial undertaking" with the word "undertaking" and the words "industrial unit" with the word "unit", wherever they occur in the said section. This is intended to provide benefit of amortisation of specified post commencement preliminary expenses to all sectors for the extension of an undertaking or the setting up of a new unit.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years".

The Memorandum also indicates so:

"With a view to providing a level playing field to the services sector, it is necessary to extend to the service sector, the same benefit of amortization of specified post-commencement preliminary expenses as it available to the manufacturing sector for the extension of an undertaking or the setting up of a new unit. Therefore, it is proposed to amend section 35D accordingly.

The amendment will take effect from the 1st day of April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years".

In the above circumstances, there cannot be any necessary intention found from the statute especially since what were covered under sub-clause (ii) of Section 35D(1) was only "industrial undertakings". We are of the opinion that without granting any retrospectivity to the said amendment, we can look at the manner in which the "industrial undertaking" has been dealt with by the various High Courts in the context of the IT Act; to find whether the assessee, a Bank extending financial services, would be entitled to amortisation of preliminary expenses in connection with the issue of shares for public subscription.

10. The learned Counsel for the appellant has relied on the decisions in Alikunju, M.A.Nazeer Cashew Industries v. C.I.T. [(1987) 166 ITR 804 (Ker)], Shankar Construction Co. v. C.I.T. [(1991) 189 ITR 463 (Kar.)], C.I.T. v. Emirates Commercial Bank Ltd. [(2003) 262 ITR 55 (Bom.)], C.I.T. v. Computerised Accounting and Management Service Pvt. Ltd. [(1999) 235 ITR 502 (Ker)] and C.I.T. v. Peerless Consultancy and Service (P.) Ltd. [(2001) 248 ITR 178]. The learned Standing Counsel for Government of India (Taxes) has relied on the decision in Ansal Housing and Construction Ltd. v. CIT [(2010) 320 ITR 420 (Delhi)].

11. In Alikunju, M.A.Nazeer Cashew Industries, this Court was concerned with the issue whether the construction of a lodging house would be considered as an "industrial undertaking". Therein the provision was one which granted exemption to gains arising on transfer of land and building forming part of industrial undertaking; when invested in setting up another industrial undertaking. The assessee had an ice factory; the land and buildings of which were acquired by the Government. The consideration was treated as long term capital gains as against which, the assessee claimed exemption under Section 54D on the ground that he had invested the capital gains in the construction of a lodging house. This Court found that the running of a lodge would be an industrial undertaking within the meaning of Section 54D.

12. In Shankar Construction Co., the Karnataka High Court was considering the meaning of "industrial undertaking" under Section 32A. The Karnataka High Court reiterated the principle that when a taxing statute is construed and there are two views possible, the view that favours the assessee has to be adopted. It was also held that in construing words in the absence of a statutory definition, it would be open to look for the meaning by reference to definitions in sister legislation. The High Court, looking at the various

definition clauses as also the definition under the Industrial Disputes Act, 1947, found the construction activities carried on by the assessee to be possible of being termed an "industrial undertaking".

13. In Computerised Accounting and Management Service Pvt. Ltd., the question came to be considered was as to whether "manufacture or production of an article or thing" would extend to a business in computerised accounting and management services. The assessee therein was engaged in preparing information, through mechanical process; with the aid of computers, to be supplied to various parties after processing the data furnished by their clients in raw form. The activity carried on by the assessee was found to come under the meaning of the term "manufacture or production" used under Section 32A of the IT Act.

14. In Peerless Consultancy and Service (P.) Ltd., the question again was as to whether the assessee was entitled to investment allowance claimed, with respect to the expenditure incurred for installation of a generator by a data processing company. The Tribunal's order allowing the claim under Section 32A was upheld, finding that '*the Revenue has been unable to show us any judgment of a court of this country or abroad which takes the view that the processing of*

data is not the processing of goods'.

15. Emirates Commercial Bank Ltd. again considered the issue of data processing and the allowance claimed under Section 32A in respect of the computers installed in the office premises, to find in favour of the assessee, which was held to be an industrial undertaking.

16. The High Court of Delhi, however, in Ansal Housing and Construction Ltd. took a contrary view with respect to the business of construction and sale of multi-storeyed residential buildings and complexes, promotion and development of residential colonies, etc. The said decision is in direct conflict with the decision of the Karnataka High Court in Shankar Construction Co. We also notice that the decision in Alikunju, M.A.Nazeer Cashew Industries was distinguished, finding that the Division Bench of this Court had only dealt with the expression "undertaking" and not with the expression "industrial undertaking". We are unable to agree with the High Court of Delhi on that issue since the specific finding was that "the running of a lodge could be said to be an industrial undertaking within the meaning of Section 54D".

17. The Division Bench decisions of this Court in Alikunju, M.A.Nazeer Cashew Industries and Computerised

Accounting and Management Service Pvt. Ltd., have a binding effect on us while the decision of the High Court of Delhi in Ansal Housing and Construction Ltd. can only be persuasive. We, hence, respectfully follow the Division Bench decisions of this Court and in doing so, we reiterate the principle as stated by the Karnataka High Court insofar as the assessee being favoured when two views are possible in construing a taxing statute. We also notice that the Division Bench of the High Court of Delhi had also construed the words "industrial undertaking" on the common parlance test. The Division Bench of this Court in Alikunju, M.A.Nazeer Cashew Industries also considered the issue on the very same principle, as can be seen from the following extracts:

"What then is an "industrial undertaking"? The Income-tax Act does not define what is "an undertaking" or what is an "industrial undertaking". It has, therefore, become necessary to construe these words. Words used in a statute dealing with matters relating to the general public are presumed to have been used in their popular rather than their narrow, legal or technical sense. *Loquitur ut vulgus*, that is, according to the common understanding and acceptation of the terms, is the doctrine that should be applied in construing the words used in statutes dealing with matters relating to the public in general. In

short, if an "Act is directed to dealings with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language." (Vide *Unwin v. Hanson* [1891] 2 QB 115 (CA), per Lord Esher M.R. at page 119). That the Income-tax Act is of general application, is beyond dispute. It, therefore, follows that the meaning that should be given to these words "industrial undertaking" must be the natural meaning. It is all the more so because the Income-tax Act is one consolidating and amending the law relating to income-tax and super tax. (See *Rao Bahadur Ravulu Subba Rao v. CIT* [1956] 30 ITR 163 (SC) at 169).

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The words "industrial undertaking" therefore, should be understood to have been used in section 54D in a wide sense, taking in its fold any project or business a person may undertake. The "running of a lodge", by the assessee, therore, can be said to be an "industrial undertaking" within the meaning of section 54D of the Income-tax Act".

Hence, this Court would answer the question in favour of the assessee and against the Revenue, finding the appellant-assessee to be eligible for the claim under Section 35D. The actual expenditure, whether it comes within Section 35D(2)(c)(iv) would be left for consideration by the AO.

18. One ancillary issue arising in the assessment year 2002-03 [I.T.A.No.1318 of 2009] is the following:

"Whether the Tribunal is correct in law and fact in dismissing the issue relating to the disallowance of expenses relating to right issue in view of the decision of the Supreme Court in the case of Brooke Bond India Ltd. vs. CIT [225 ITR 798]?

The decision brooks no dispute and the question has to be answered in favour of the Revenue and against the assessee and we do so.

In the light of the findings above, I.T.A.Nos.456/2009, 643/2009, 498/2009, 635/2009, 712/2009, 98/2012 and 148/2012 are allowed and I.T.A.Nos.1108/2009, 651/2009, 1691/2009, 717/2009, 1318/2009, 126/2012 and 116/2012 are partly allowed. Parties are left to suffer their respective costs, in the appeals.

Sd/-
K.VINOD CHANDRAN
JUDGE

Sd/-
ASHOK MENON
JUDGE

Vku/-

APPENDIX OF ITA 456/2009

APPELLANT'S ANNEXURES:

ANNEXURE-A	TRUE COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL COCHIN BENCH IN DATED 31/10/2003 IN ITA 180/COCH/2000.
ANNEXURE-B	TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) COCHIN DATED 29/02/2000.
ANNEXURE-C	TRUE COPY OF THE ASSESSMENT ORDER DATED 23/12/1998 OF THE ASSESSING OFFICER.

APPENDIX OF ITA 98/2012

APPELLANT'S ANNEXURES:

ANNEXURE-A	TRUE COPY OF THE ORDER OF THE ASSESSING OFFICER DATED 17/12/2007.
ANNEXURE-B	COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX DATED 15/01/2009.
ANNEXURE-C	COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 30/12/2011.

APPENDIX OF ITA 116/2012

APPELLANT'S ANNEXURES:

ANNEXURE-A	TRUE COPY OF THE ASSESSMENT ORDER DATED 28/03/2008.
ANNEXURE-B	COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) DATED 21/11/2008.
ANNEXURE-C	COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 30/12/2011.

APPENDIX OF ITA 126/2012

APPELLANT'S ANNEXURES:

ANNEXURE-A	TRUE COPY OF THE ASSESSMENT ORDER DATED 28/03/2008.
ANNEXURE-B	COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) DATED 21/11/2008.
ANNEXURE-C	COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 30/12/2011.

APPENDIX OF ITA 148/2012

APPELLANT'S ANNEXURES:

ANNEXURE-A	TRUE COPY OF THE ASSESSMENT ORDER DATED 17/12/2007.
ANNEXURE-B	COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) DATED 21/11/2008.
ANNEXURE-C	COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 30/12/2011.

APPENDIX OF ITA 498/2009

APPELLANT'S ANNEXURES:

ANNEXURE-A	CERTIFIED COPY OF ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH IN ITA NO.336/COCH/2006 DATED 20/08/2007 FOR THE ASSESSMENT YEAR 2003-04.
ANNEXURE-B	TRUE COPY OF THE ORDER OF THE COMMISSIONER INCOME TAX (APPEALS) V, KOCHI ITA NO. 67/RI/TCR/CIT-V/05-06, DATED 17/03/2006.
ANNEXURE-C	TRUE COPY OF THE ORDER OF ASSESSMENT ISSUED BY THE ASSESSING OFFICER ON 15/12/2005 FOR THE ASST. YEAR 2003-04.

APPENDIX OF ITA 635/2009

APPELLANT'S ANNEXURES:

ANNEXURE-A	TRUE COPY OF ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH IN ITA NO.337/(COCH)/2006 DATED 20/08/2007 FOR THE ASSESSMENT YEAR 2004-05.
ANNEXURE-B	TRUE COPY OF THE ORDER OF THE COMMISSIONER INCOME TAX (APPEALS) V, KOCHI ITA NO.66/RI/TCR/CIT-V/05-06, DATED 28/03/2006.
ANNEXURE-C	TRUE COPY OF THE ORDER OF ASSESSMENT ISSUED BY THE ASSESSING OFFICER ON 15/12/2005 FOR THE ASST. YEAR 2004-05.

APPENDIX OF ITA 643/2009

APPELLANT'S ANNEXURES:

ANNEXURE-A	CERTIFIED COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL COCHIN BENCH IN DATED 19/09/2005 IN ITA 165/COCH/2004.
ANNEXURE-B	TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) COCHIN DATED 01/12/2003.
ANNEXURE-C	TRUE COPY OF THE ASSESSMENT ORDER DATED 20/03/2002 OF THE ASSESSING OFFICER.

APPENDIX OF ITA 651/2009

APPELLANT'S ANNEXURES:

ANNEXURE-A	CERTIFIED COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH IN DATED 29/12/2006 IN ITA 1197/COCH/2004.
ANNEXURE-B	TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) COCHIN DATED 10/09/2004.
ANNEXURE-C	TRUE COPY OF THE ASSESSMENT ORDER DATED 16/11/2000 OF THE ASSESSING OFFICER.

APPENDIX OF ITA 712/2009

APPELLANT'S ANNEXURES:

ANNEXURE-A	TRUE COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH IN DATED 29/12/2006 IN ITA 1198/COCH/2004.
ANNEXURE-B	TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) COCHIN DATED 10/09/2004.
ANNEXURE-C	TRUE COPY OF THE ASSESSMENT ORDER DATED 30.09.2002 OF THE ASSESSING OFFICER.
ANNEXURE-D	TRUE COPY OF FORM NO.36 DATED 25/11/2004 FILED BEFORE THE TRIBUNAL.
ANNEXURE-E	TRUE COPY OF THE PETITION DATED 12/12/2006 WITH ITS ENCLOSURE OF THE CONDENSED GROUNDS.

APPENDIX OF ITA 717/2009

APPELLANT'S ANNEXURES:

ANNEXURE-A CERTIFIED COPY OF THE ORDER OF THE INCOME
TAX APPELLATE TRIBUNAL, COCHIN BENCH IN
DATED 28/07/2006 IN ITA 949/COCH/2004.

ANNEXURE-B TRUE COPY OF THE ORDER OF THE COMMISSIONER
OF INCOME TAX (APPEALS) COCHIN DATED
07/06/2004.

ANNEXURE-C TRUE COPY OF THE ASSESSMENT ORDER DATED
30/09/2002 OF THE ASSESSING OFFICER.

APPENDIX OF ITA 1108/2009

APPELLANT'S ANNEXURES:

ANNEXURE-A	CERTIFIED COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL COCHIN BENCH IN DATED 11/08/2006 IN ITA 72/COCH/2001.
ANNEXURE-B	TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) COCHIN DATED 04/12/2000.
ANNEXURE-C	TRUE COPY OF THE ASSESSMENT ORDER DATED 23/03/2000 OF THE ASSESSING OFFICER.

APPENDIX OF ITA 1318/2009

APPELLANT'S ANNEXURES:

ANNEXURE-A	CERTIFIED COPY OF ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH IN ITA NO.30/COCH/2006 DATED 10/01/2008 FOR THE ASSESSMENT YEAR 2002-03.
ANNEXURE-B	TRUE COPY OF THE ORDER OF THE COMMISSIONER INCOME TAX (APPEALS) V, KOCHI ITA NO. 70/RI/TCR/CIT-V/04-05 DATED 24/10/2005.
ANNEXURE-C	TRUE COPY OF THE ORDER OF ASSESSMENT ISSUED BY THE ASSESSING OFFICER ON 31/01/2005 FOR THE ASST. YEAR 2002-03.

APPENDIX OF ITA 1691/2009

APPELLANT'S ANNEXURES:

ANNEXURE-A CERTIFIED COPY OF THE ORDER OF THE INCOME
TAX APPELLATE TRIBUNAL, COCHIN BENCH IN
DATED 16/03/2009 IN ITA 602/COCH/2006.

ANNEXURE-B TRUE COPY OF THE ORDER OF THE COMMISSIONER
OF INCOME TAX (APPEALS) COCHIN DATED
31/08/2006.

ANNEXURE-C TRUE COPY OF THE ASSESSMENT ORDER DATED
28/01/2004 OF THE ASSESSING OFFICER.

Vku/-

[true copy]