

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos. 81 & 585/PUN/2018

निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

The Deputy Commissioner of Income Tax,
Circle 1(1), Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Bank of Maharashtra,
1501, Lokmangal, Shivaji Nagar,
Pune-411 005.
PAN: AACCB0774B

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos. 114 & 780/PUN/2018

निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

M/s. Bank of Maharashtra,
1501, Lokmangal, Shivaji Nagar,
Pune-411 005.
PAN: AACCB0774B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1(1), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri S. Ananthan
Smt. R. Lalitha

Revenue by : Shri B. Kishor

सुनवाई की तारीख / Date of Hearing : 12.03.2020

घोषणा की तारीख / Date of Pronouncement : 13.03.2020

आदेश / ORDER

PER BENCH:

These are **four** cross appeals filed by the Revenue and the assessee in relation to the assessment years 2013-14 and 2014-15.

ITA No.81/PUN/2018 filed by the Revenue and ITA No.114/PUN/2018 filed by the assessee are emanating from the order of the Ld. CIT(Appeals)-1, Pune dated 24.10.2017 for the assessment years 2013-14.

ITA No. 585/PUN/2018 filed by the Revenue and ITA No. 780/PUN/2018 filed by the assessee are emanating from the order of the Ld.CIT(Appeals)-1, Pune dated 14.12.2017 for the assessment year 2014-15.

2. These cases were heard together. Since facts common and issues are similar, these cases are being disposed of vide this consolidated order. For the sake of convenience, first we would take up Revenue's appeal in ITA No.81/PUN/2018 & ITA No.585/PUN/2018 for the assessment year 2013-14 & 2014-15 for adjudication.

ITA No.81/PUN/2018 (By Revenue)
ITA No.585/PUN/2018 (By Revenue)
A.Ys.2013-14 & 2014-15

3. In ITA No.81/PUN/2018 and ITA No.585/PUN/2018, the Revenue has raised common grounds of appeal which reads as under:

“1. The order of the Ld. CIT(A) is contrary to law and to the facts and circumstances of the case.

2. The Ld. Commissioner of Income Tax (Appeal) has erred on the facts and circumstances of the case in allowing loss of valuation of Held to Maturity (HTM) securities when HTM securities are capital in nature.

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

4. At the very outset, the Ld. Counsel for the assessee submitted that grounds of appeal raised by the Revenue pertains to the allowability of depreciation on **Held to Maturity (HTM)** Investment. In this regard, the Ld. Counsel submitted that this issue is covered by the decision in assessee’s own case in **ITA Nos.634 & 635/PN/2017 order dated 27.06.2019** and it was adjudicated by the Tribunal against the Revenue. The Ld. Counsel for the assessee has drawn our attention to Para 2, Page No.105-108 of the paper book.

5. We have heard both the sides and perused the relevant paragraphs of the order of the Tribunal in assessee’s own case (supra.) wherein, the Tribunal on the issue has held as follows:

“2. The Revenue has assailed the findings of Assessing Officer on the single issue of allowing loss on valuation of securities Held to Maturity (HTM).

2.1 The ld. AR submitted that this issue has been let to rest by the Hon'ble Bombay High Court in assessee's own case in Income Tax Appeal No. 920 of 2015 decided on 27-02-2018. The ld. AR further submitted that the Tribunal in appeal by the assessee in ITA No. 1370/PUN/2014 for the assessment year 2010-11 decided on 11-03-2019 has also considered this issue and has decided in favour of assessee.

2.2 Mrs. Kesang Y. Sherpa representing the Department fairly admitted that the issue relating to loss on valuation of HTM securities has been considered by the Tribunal in assessee's own case in immediately preceding assessment years.

2.3 Both sides heard. Orders of the authorities below perused. The Revenue is in appeal against the findings of Commissioner of Income Tax (Appeals) on the issue of loss on valuation of HTM securities. We find that the Commissioner of Income Tax (Appeals) has decided this issue in favour of assessee by following the order of Tribunal in assessee's own case for assessment year 2005-06 in ITA No. 1505/PN/2008 and in ITA Nos. 1135 to 1138/PN/2013 decided on 17-08-2014. The issue of allowability of loss on valuation of HTM securities is recurring in assessment years after assessment years. The Co-ordinate Bench in assessee's own case for assessment year 2010-11 in ITA No. 1370/PUN/2014 (supra) has decided this issue in favour of the assessee by placing reliance on the order of Tribunal in ITA No. 1505/PN/2008 and now the same has been upheld by the Hon'ble Bombay High Court in Income Tax Appeal No. 920 of 2015. For the sake of completeness the relevant extract of the findings of Tribunal in ITA No. 1370/PUN/2014 (supra) on this issue are reproduced here-in-below :

"5.3 Both sides heard on the issue of disallowance of claim of loss in respect of securities held under HTM category. Both sides are unanimous in stating that the present issue was subject matter of appeal before the Tribunal in ITA No. 1505/PN/2008 and in ITA Nos. 1135 to 1138/PN/2013 (supra). The Co-ordinate Bench adjudicated the issue by observing as under:

"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 (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 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. “

5.4 The ld. AR has further drawn our attention that the decision of Tribunal has been upheld by the Hon^{ble} Bombay High Court in Income Tax appeal No. 920 of 2015 (supra). The copy of the Hon^{ble} High Court order dated 27-02-2018 was furnished before us. A perusal of same shows that one of the question of law before the Hon^{ble} High Court for consideration was :

“(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition of

Rs.359,24,58,508/- in allowing loss of valuation of Held to Maturity (HTM) securities, when HTM securities are capital in nature?"

The aforesaid question was decided by the Hon"ble High Court in favour of the assessee upholding the order of Tribunal. Thus, in view of the fact that the issue has now been settled by the Hon"ble High Court in favour of the assessee, we find merit in ground No. 3 of the appeal by assessee. Consequently, ground No. 3 raised in the appeal is allowed."

Since, the issue raised in present appeal is identical to the one already adjudicated by the Tribunal and no contrary decision/material has been placed on record by the Revenue, the ground raised by the Revenue in its appeal on the issue of disallowance of loss on valuation of securities held under HTM category is dismissed. 2.4 In the result, the appeal of Revenue is dismissed."

In view of the above decision, it is evident that this issue of allowability of loss in value of HTM securities was decided in favour of the assessee and against the Revenue in assessee's own case (supra.) by the Co-ordinate Bench of the Tribunal, Pune. Considering the settled nature of the issue, we are of the opinion that pending of the appeal before the Hon'ble Supreme Court is not a ground for not adjudicating the issue before us. Accordingly, we find that the order of the Ld. CIT(Appeals) is fair and reasonable and same does not call for any interference. Hence, **grounds raised by the Revenue in both the appeals are dismissed.**

6. In the result, **appeals of the Revenue in ITA No.81/PUN/2018 and ITA No.585/PUN/2018 are dismissed.**

ITA No.114/PUN/2018 (By Assessee)
ITA No.780/PUN/2018 (By Assessee)
A.Ys. 2013-14 & 2014-15

7. In ITA No.114/PUN/2018 and ITA No.780/PUN/2018, the assessee has raised common grounds of appeal which are as follows:

“1. The order of the learned CIT(A) is bad in law, arbitrary, perverse and legally unsustainable.

2. 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]/[viii] of the I.T. Act 1961 to Rs.111,72,83,312/- as against the claim of Rs. 706,21,02,484/- made by the appellant.

2.1. The learned CIT(A) erred in holding that the deduction should be restricted to the provision made in the books accounts for rural advances.

2.2. The learned CIT(A) failed to appreciate the fact the entire provision made has to be considered and not the provision relating to rural advances only be considered.

2.3 The learned CIT(A) failed to appreciate the fact that the Hon'ble Supreme Court in the case of Catholic Syrian Bank [2012] 343 ITR 270 (SC) did not lay down the law that the deduction should be allowed by only considering the provision for rural advances in the books.

2.4 Without prejudice to the above, the learned CIT(A) erred in holding that the deduction should be restricted to the provision made in the books of accounts and not to the extent of eligible amount.

2.5 Without prejudice to the above, the learned CIT(A) erred in not considering the provision made subsequently for the purpose of arriving at the deduction.

3. In the facts and circumstances of the case and in law, the action of the learned CIT(A) in upholding the disallowance of Rs. 1,58,75,823/- made by the learned Assessing Officer u/s 14A of the I.T. Act 1961 r.w.r 8D(2)(iii), being bad in law, arbitrary, perverse and legally unsustainable the same may please be deleted.

3.1 The learned CIT(A) failed to appreciate the fact that the learned Assessing Officer erred in invoking the provisions of Sec 14A without recording any finding as to the nexus between the expenditure and exempt income.

3.2 The learned CIT(A) failed to appreciate the fact that the Appellant bank would have incurred the operating expenses even without investing in tax free investments.

3.3. Without prejudice to the above, the learned CIT(A) failed to appreciate the fact that the investments of the appellant bank being stock in trade, no disallowance can be made u/s 14A.

4. In the facts and circumstances of the case and in law, the action of the learned CIT(A) in upholding the disallowance u/s 40(a)(ia) of the I.T. Act 1961, in respect of short deduction of tax being bad in law, arbitrary, perverse and legally unsustainable the same may please be deleted.

4.1 The learned CIT(A) erred in, holding that the provisions of section 40(a)(ia) is applicable even in cases of short deduction.

5. In the facts and circumstances of the case and in law, the action of the learned CIT(A) in holding that the provisions of section 115JB are

applicable to the appellant bank being bad in law, arbitrary, perverse and legally unsustainable the same may please be deleted.

5.1 The learned CIT(A) failed to appreciate the fact that the provisions of section 115JB are not applicable to appellant bank as the bank is not a banking company.

5.2 The learned CIT(A) failed to appreciate the fact that the Appellant is not covered by the proviso to section 211 (2) of the Companies Act, 1956.

6. Without prejudice to Ground No.5, the learned CIT (A) erred in adding various items to the book profit which are not covered by the Explanation 1 to section 115JB (2).

6.1 The learned CIT(A) erred in holding that AO is not suppose to examine the' nature of item as to whether it is provision or write off while computing the Book Profit.

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."

8. **Ground No.1** raised in appeal by the assessee is general in nature and hence, no adjudication is required. Hence, **Ground No.1 raised in appeal by the assessee is dismissed.**

9. **Ground No.2** pertains to the issue of provision for bad and doubtful debts of Rs.585,72,52,022/- as per Section 36(1)(viia) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

10. The Ld. Counsel for the assessee submitted that this is a case where the assessee created provision for bad and doubtful debts amounting to Rs.585,72,52,022/-. However, the assessee claimed deduction u/s.36(1)(viia) of the Act amounting to Rs.706,21,02,484/-. The Ld. Counsel further submitted that relying on the judgment of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. Vs. Commissioner of Income Tax (2012) reported in 343 ITR 270, the Assessing Officer rejected the claim of the assessee and allowed deduction only at Rs.111,72,83,312/- i.e. provision

relatable to the rural advances. Contesting the decisions of the Assessing Officer and the Ld. CIT(Appeals), the Ld. Counsel for the assessee submitted the similar claim was made by the assessee in assessment year 2010-11. The Co-ordinate Bench of Tribunal upheld the findings of Commissioner of Income Tax (Appeals) and has restricted the deduction u/s. 36(1)(viii) to the extent of provision made.

10.1 The Ld. Counsel further has drawn our attention to Para 4 of the Tribunal's order in assessee's own case in ITA No.634 & 635/PN/2017 (supra.) wherein the assessee was given relief and the claim of the assessee was allowed subject to the provision actually made for bad and doubtful debts in the books of account. In this regard, the Ld. Counsel for the assessee has drawn our attention at Para 4 of the said order.

11. We have heard both the sides and perused the relevant paragraphs of the order of the Tribunal in assessee's own case (supra.) wherein, the Tribunal on the issue has held as follows:

"4. The ground No. 2 of the appeal is :

"2. 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)(viii) of the I.T. Act 1961 to Rs.102,36,58,472/- as against the claim of Rs.486,59,69,355/- made by the appellant.

2.1 The learned CIT(A) erred in holding that the deduction should be restricted to the provision made in the books accounts for rural advances.

2.2 The learned CIT(A) failed to appreciate the fact the entire provision made has to be considered and not the provision relating to rural advances only be considered.

2.3 The learned CIT(A) failed to appreciate the fact that the Hon'ble Supreme Court did not lay down the law that the deduction should be allowed by only considering the provision for rural advances in the books.

2.4 Without prejudice to the above, the learned CIT(A) erred in holding that the deduction should be restricted to the provision made in the books of accounts."

4.1 The ld. AR submitted that the assessee bank claimed deduction of Rs.486.59 crores u/s. 36(1)(viiia) though the provision was made under the aforesaid section to the extent of Rs.102.36 crores. The similar claimed was made by the assessee in assessment year 2010-11. The Co-ordinate Bench of Tribunal upheld the findings of Commissioner of Income Tax (Appeals) and has restricted the deduction u/s. 36(1)(viiia) to the extent of provision made.

4.2 We have heard the submissions made by ld. AR. The ld. AR has fairly admitted that the Tribunal in assessee's own case in assessment year 2010-11 has restricted deduction u/s. 36(1)(viiia) to the extent of provision made. Thus, in view of the admitted position, this ground of appeal by the assessee qua the claim of deduction u/s. 36(1)(viiia) is allowed to the extent of provision actually made for bad and doubtful debts in the books of account. Accordingly, the ground No. 2 of the appeal is partly allowed in line with the findings for assessment year 2010-11."

In view of the decision mentioned hereinabove, we direct the Ld. CIT(Appeals) to comply with our order in assessee's own case dated 27.06.2019 (supra.) and decide the matter accordingly. Thus, **Ground No.2 raised in appeal by the assessee is partly allowed.**

12. **Ground No.3** pertains to the disallowance of Rs.1,58,75,823/- u/s.14A r.w.r. 8D(2)(iii) of the Income Tax Rules, 1962.

13. The Ld. Counsel for the assessee submitted that this issue is covered in favour of the assessee by the decision of the Tribunal in assessee own case in ITA No.634 & 635/PN/2017 (supra.). In this regard, the Ld. Counsel for the assessee has drawn our attention at Para 5 of the said order. The Ld. Counsel further submitted that the Assessing Officer erred in invoking the provisions of Section 14A of the Act without recording any findings as to the nexus between the expenditure and exempt income.

14. We have heard both the sides and perused the relevant paragraphs of the order of the Tribunal in assessee's own case (supra.) wherein, the

Tribunal has decided the issue in favour of the assessee by observing as follows:

“5. The ground No. 3 of the appeal is :

“3. In the facts and circumstances of the case and in law, the learned CIT(A) has erred in upholding the disallowance u/s. 14A of the I.T. Act, 1961 r.w.r. 8D(2)(iii), being bad in law, arbitrary, perverse and legally unsustainable the same may please be deleted.

3.1 The learned CIT (A) failed to appreciate the fact that the learned Assessing Officer erred in invoking the provisions of Sec. 14A without recording any finding as to the nexus between the expenditure and exempt income.

3.2 The learned CIT(A) failed to appreciate the fact that the investment of the appellant bank being stock in trade, no disallowance can be made u/s. 14A.”

5.1 The ld. AR submitted that the Assessing Officer made disallowance of Rs.18.79 crores u/s. 14A r.w.r. 8D(2)(ii) and (iii). The Commissioner of Income Tax (Appeals) restricted the disallowance to the extent of Rule 8D(2)(iii). The ld. AR pointed that the investments were held by the assessee as stock-in-trade. Therefore, no disallowance u/s. 14A was required to be made. The ld. AR in support of his submissions placed reliance on the decision of Tribunal in assessee's own case for assessment year 2010-11. We find that the similar disallowance was made by the Assessing Officer in assessment year 2010-11. The Tribunal deleted the disallowance u/s. 14A of the Act, by observing as under :

“8.3 Both sides heard. The first contention of the assessee is that the investments were held by the assessee as stock in trade, therefore, no disallowance u/s. 14A was required to be made in respect of exempt income earned on shares held as “Stock in trade”. The Hon`ble Punjab and Haryana High Court in the case of Pr. Commissioner of Income Tax Vs. State Bank of Patiala (supra) has decided the issue of disallowance u/s. 14A in respect of expenditure in earning exempt income from shares held as stock in trade. The Hon`ble High Court after placing reliance on the decision of Hon`ble Apex Court in the case of Commissioner of Income Tax Vs. Walfort Share & Stock Brokers (P) Ltd. reported as 326 ITR 1 held that that no disallowance u/s. 14A is to be made where the shares are held as stock in trade. For the sake of completeness relevant extract of the judgment is reproduced here-in-below :

“26. What is of vital importance in the above judgment are the observations emphasised by us. Each of them expressly states that what is disallowed is expenditure incurred to “earn” exempt income. The words “in relation to” in section 14A must be construed accordingly. Thus, the words “in relation to” apply to earning exempt income. The importance of the observation is this.

We have held that the securities in question constituted the assessee's stock-in-trade and the income that arises on account of the purchase and sale of the securities is its

business income and is brought to tax as such. That income is not exempt from tax and, therefore, the expenditure incurred in relation thereto does not fall within the ambit of section 14A.

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

8.4 The Hon^{ble} Apex Court in the case of Maxopp Investment Ltd. Vs. Commissioner of Income Tax (supra) has approved the judgment rendered in the case of Pr. Commissioner of Income Tax Vs. State Bank of Patiala (supra). Therefore, in view of the law settled by the Hon^{ble} Apex Court, no disallowance u/s. 14A is warranted in respect of shares held by the assessee as stock in trade.

8.5 Since, the disallowance u/s. 14A has been set at naught on the ground of assessee holding the investment as „stock in trade“, the alternate contention of assessee with regard to disallowance made under Rule 8D(2)(ii) in respect of interest expenditure has become academic. Thus, in view of our above findings ground No. 6 raised in the appeal by the assessee is allowed."

The Revenue has not brought to our notice any contrary decision. Hence, we find no reason to take a different view. Respectfully, following the decision of Co-ordinate Bench the disallowance made u/s. 14A is deleted in toto and hence, ground No. 3 of the appeal is allowed."

Respectfully following the decision referred hereinabove, the disallowance made u/s.14A of the Act is deleted in toto and **ground No.3 raised in appeal by the assessee is allowed.**

15. **Ground No.4** pertains to the disallowance u/s.40(a)(ia) of the Act in respect of short deduction of tax.

16. The Ld. Counsel for the assessee submitted that the provisions of section 40(a)(ia) of the Act does not apply to short deduction and it is applicable only to cases where either TDS is not at all deducted or having deducted but not remitted. In this regard, the Ld Counsel for the assessee has placed reliance on the following decisions:

(i) CIT Vs. S.K. Tekriwal (2014) 361 ITR 432.

(ii) CIT Vs. Vijaya Bank, ITA No.343/2014 dated 15.09.2015-Kar HC

(iii) Nitin M. Panchamiya Vs. Additional Commissioner (2012) 19 taxmann.com 2020(Mum.)

16.1 The Ld. Counsel for the assessee further submitted that this issue is covered in favour of the assessee by the decision of the Co-ordinate Bench of the Tribunal in assessee's own case in ITA No.634 & 635/PN/2017 (supra.). In this regard, the Ld. Counsel for the assessee has drawn our attention at Para 8 of the said order.

17. We have heard both the sides and perused the relevant paragraphs of the order of the Tribunal in assessee's own case (supra.) wherein, the Tribunal has decided the issue in favour of the assessee by observing as follows:

"8. The ground No. 6 of the appeal is :

"6. In the facts and circumstances of the case and in law, the action of the learned CIT(A) in upholding the disallowance u/s 40(a)(ia) of the I.T. Act 1961, in respect of short deduction of tax being bad in law, arbitrary, perverse and legally unsustainable the same may please be deleted.

6.1 The learned CIT(A) erred in holding that the provisions of section 40(a)(ia) is applicable even in cases of short deduction.

8.1 The ld. AR submitted that the Assessing Officer has made disallowance u/s. 40(a)(ia) for short deduction of tax. The ld. AR pointed that the CO-ordinate Bench of Tribunal in assessment year 2010-11 in

assessee's own case has deleted the disallowance u/s. 40(a)(ia) in respect of short deduction of tax at source.

8.2 We have heard the submissions made by the ld. AR. We find that disallowance u/s. 40(a)(ia) on account of short deduction of tax at source was made in assessment year 2010-11. The Tribunal following the decision rendered by the Hon'ble Calcutta High Court in the case of Commissioner of Income Tax Vs. S K Tekriwal reported as 361 ITR 432 deleted the disallowance made u/s. 40(a)(ia) on short deduction of tax. Following the parity of reasons the disallowance made in the assessment year under appeal is deleted as well. Accordingly, ground No. 6 of the appeal is allowed."

We observe that the Tribunal following the decision rendered by the Hon'ble Calcutta High Court in the case of Commissioner of Income Tax Vs. S K Tekriwal reported as 361 ITR 432 deleted the disallowance made u/s. 40(a)(ia) on short deduction of tax. Following the parity of reasons the disallowance made in the assessment year under appeal is deleted and **ground No.4 raised in appeal by the assessee is allowed.**

18. **Ground No.5** relates to the applicability of the provision u/s.115JB(2)(b) of the Act. The limited issue is that the assessee computed his income in normal provision whereas, the Revenue computed the income of the assessee under the provisions of Section 115JB(2) of the Act.

19. On this issue, the Ld. Counsel for the assessee has drawn our attention to the provision of section 115JB(2) and the amended provisions of Section 115JB(2)(b) of the Act and submitted that the amended provision which took place on 01.04.2012, has excluded the banking companies from the provisions of section 115JB of the Act. Section 115JB (2) was amended vide Finance Act, 2012 to the effect that the provisions of section 115JB are not applicable to the companies who do not prepare profit and loss account as

per the provisions of the Companies Act, 1956. The relevant extracts of the amended section are as follows:

“(2) Every assessee-

(a) XXXXXXXXXXXXXXX

(b) Being a company, to which the proviso to sub section (2) of Section 211 of the companies Act, 1956 (1 of 1956) is applicable shall for the purpose of this section prepare its profit and loss account for the relevant previous year in accordance with the provisions of the Act governing such company.”

20. The Ld. Counsel for the assessee further submitted that vide bifurcation of sub section (2) of Section 115JB in Clause (b), the Banking Companies are not under the scope of the provisions of section 115JB (2)(b) of the Act. The case of the assessee is that it is not Banking Company. The Ld. Counsel for the assessee also submitted that this issue was not raised before the Assessing Authority. However, the Ld. Counsel submitted that this matter came up for adjudication before the Ld. CIT(Appeals) who rejected the arguments of the assessee merely following of provision of Explanation 3 of the said section. The Explanation 3 is actually a sunset clause ending on 31.03.2012 vide Finance Act, 2012. The Ld. CIT(Appeals) ignoring the submissions of the assessee applied the said Explanation to the case of the assessee without giving into the essential core fact **whether the assessee is Banking Company or Corporation or otherwise.**

20.1 Before us, the Ld. Counsel for the assessee also submitted that they are not Banking Company. He referred to the events of nationalization of Banks that took place in the year 1970 and relevant Acts i.e. **Banking Companies (acquisition and transfer of undertakings) Act 1970.**

21. It is the case of the Revenue on this proviso that the assessee falls under the Banking Company and therefore, proviso to section 115JB of the Act still applicable to the Banking Company like the assessee.

22. In rebuttal, the Ld. Counsel for the assessee submitted that the assessee is neither the Company leave alone Banking Company and it is a Corporation created by the Special law of Parliament and therefore, the provisions of section 115JB cannot be applicable to the present case of the assessee. In this regard, the Ld. Counsel for the assessee has placed reliance on the following decisions:

(i) ACIT Vs. Indian Overseas Bank, ITA No.948 & 777/Chny/2018 dated 22.01.2020.

(ii) DCIT Vs. Damodar Vally Corporation 2018 (8) TMI 1363-ITAT Kolkata.

The Ld. Counsel further submitted that amended provision on Finance Act, 2012 does not apply to a non- Banking Company like the assessee.

23. Further, referring to the computation provided in the statute as applicable to the companies and others, the Ld. Counsel argued that said procedure provided in the statute does not apply to the Corporation like the present assessee.

24. On hearing both the parties and perusing the orders of the Assessing Officer and Ld. CIT(Appeals) and also the amended Clause(b) read with proviso to Section 211(2) of the Companies Act, 1956, we find there is a requirement of verification of facts whether the assessee is a Banking Company or Corporation or otherwise. The orders of the Assessing Officer or the Ld. CIT(Appeals) are silent on the aspect of the arguments of the assessee

that it is not a Banking Company. To that extent, the order of the Ld. CIT(Appeals) is not a speaking order as per Section 250(6) of the Act. Therefore, we are of the opinion that the order of the Ld. CIT(Appeals) stands erroneous so far as the interpretation of Explanation 3 of the Section 115JB of the Act. Explanation commencing on or before 01.04.2012 should be properly interpreted by the Ld. CIT(Appeals) in the remand proceedings. In view of the above facts and circumstances, we remand the issue back to the file of the Ld. CIT(Appeals) who shall pass a speaking order after hearing the submissions of the assessee on the aspect of applicability of provision 115JB of the Act. The Ld. CIT(Appeals) is also directed to adjudicate the issue in line with the status of the assessee whether it is Banking Company or Corporation or otherwise, procedure of computation of income provided in section 115JB of the Act, facts of the case etc. after providing reasonable opportunity of hearing to the assessee. Thus, **ground No.5 raised in appeal by the assessee is allowed for statistical purposes.**

25. **Ground No. 6** is an alternative ground to Ground No.5. Since we have remanded the issue raised in ground No.5, accordingly, the issue raised in ground No.6 is also remanded to the file of the Ld. CIT(Appeals) with similar direction as given in ground No.5. The Ld. CIT(Appeals) is also directed to pass a speaking order considering the arguments raised before him. Thus, **ground No.6 raised in appeal by the assessee is allowed for statistical purposes.**

26. In the result, **appeals of the assessee in ITA No.114/PUN/2018 and ITA No.780/PUN/2018 are allowed for statistical purposes.**

27. In the combined result, **the appeals of the Revenue are dismissed and appeals of the assessee are allowed for statistical purposes.**

Order pronounced on 13th day of March, 2020.

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

Sd/-
D. KARUNAKARA RAO
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 13th March, 2020.
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal)-1, Pune
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	12.03.2020	Sr.PS/PS
2	Draft placed before author	13.03.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		