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

BEFORE SHRI MAHAVIR SINGH, JM AND SHRI G. MANJUNATHA, AM

I.T.A. No.1891/Mum/2011 & 3958/Mum/2014
Assessment Year: 2004-05 & 2010-11)

Dy. CIT-2(1), Aayakar Bhavan, R. No. 575, 5th Floor, M. K. Road, Mumbai-400 020	**बनाम**/ Vs.	M/s. Central Bank of India Central Office (B/S) Depot, 4th Floor, Chandramukhi, Nariman Point, Mumbai-21
PAN/GIR No. AAACC 2498 P		
(Revenue)	**:**	**(Assessee)**

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CO. No.200/Mum/2013
(Arising out of ITA No. 1891/Mum/2011)
(Assessment Year: 2004-05)
&
ITA No. 1431/Mum/2011 & 3757/Mum/2014
(Assessment Year: 2004-05 & 2010-11)

M/s. Central Bank of India Central Office (B/S) Depot, 4th Floor, Chandramukhi, Nariman Point, Mumbai-21	**बनाम**/ Vs.	Dy. CIT-2(1), Aayakar Bhavan, R. No. 575, 5th Floor, M. K. Road, Mumbai-400 020
PAN/GIR No. AAACC 2498 P		
(Assessee)	**:**	**(Revenue)**

Revenue by	:	Shri H. N. Singh
Assessee **by**	:	Shri Rajnikant V. Chaniyari

सुनवाई की तारीख / **Date of Hearing**	:	23.05.2018
घोषणा की तारीख / **Date of Pronouncement**	:	08.06.2018

आदेश / O R D E R

Per G. Manjunatha, A. M.:

These cross appeals filed by the assessee, as well as Revenue and cross objections by the assessee are directed against separate, but identical orders of the ld.

Commissioner of Income Tax (Appeals) – 4, Mumbai dated 21.12.2010 and 27.04.2012 for the assessment years 2004-05 and 2010-11. Since the facts are identical, the issues are common, for the sake of convenience, these appeals were heard together and are disposed of by this common order.

2. The assessee as well as the Revenue has taken common grounds of appeal for both the assessment years. From these grounds of appeal, the assessee has challenged an addition sustained by the ld. Commissioner of Income Tax (Appeals) in respect of disallowance of bad and doubtful debts of non rural branches and disallowance of expenditure incurred in relation to exempt income. The assessee also challenged the additions made by the Assessing Officer towards unreconciled credit entries in the nostro mirror accounts credited to the profit and loss account for the assessment year 2010-11. The Revenue, from these grounds of appeal challenged the deletion of additions made by the Assessing Officer towards bad debts and diminution in value of investment held as stock in-trade.

3. Brief facts of the case extracted from ITA No. 1891/Mum/2011 for the assessment year 2004-05 are that the assessee has a scheduled bank, filed its return of income for the assessment year 2004-05 on 29.10.2004, declaring total income of Rs.3,41,92,94,640/-. The case has been selected for scrutiny and the assessment has been completed u/s. 143(3) on 23.12.2005 determining the total income at Rs.1,15,94,66,420/- interalia making additions towards disallowance of bad debts,

disallowance of expenditure incurred in relation to exempt income and accrued interest on investments.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the ld. Commissioner of Income Tax (Appeals). Before the ld. Commissioner of Income Tax (Appeals), the assessee has challenged the additions made by the Assessing Officer towards disallowance of bad debt written off in respect of non-rural branches and argued that issue has been covered in favour of the assessee by the series of decision of ITAT, Mumbai in assessee's own case right from assessment year 1989-90 to 1995-96, wherein under similar facts, the ITAT has allowed bad debt written off in respect of non rural branches. Therefore, the Assessing Officer has erred in disallowing bad debt written off u/s. 36(1)(vii) of the Income Tax Act, 1961. The assessee also challenged the additions made by the Assessing Officer in respect of disallowance expenditure incurred in relation to exempt income u/s. 14A of the Act, on the ground that the assessee's investments are covered out of its own interest free funds, therefore there is no reason for the Assessing Officer to disallow the interest and other expenditure u/s. 14A of the Act. As regards disallowance of dimimution in value of investment held as stock-in-trade, the assessee submitted that it is following similar method of accounting for earlier years which has been accepted by the Department and, hence, without any changes in facts, the Assessing Officer was erred in making the additions towards dimimution in value of investment. The ld. Commissioner of Income Tax (Appeals) after considering the submissions of the

assessee and also relied upon certain judicial precedence, partly allowed the appeal filed by the assessee wherein he has confirmed the additions made by the Assessing Officer towards disallowance of bad debt written off in respect of non rural branches and disallowance of expenditure incurred in relation to exempt income. However, deleted the additions made by the Assessing Officer towards dimimution in value of investment by relying upon the decision of Hon'ble Bombay High Court in the case of *CIT vs. Bank of Baroda* [2003] 262 ITR 334 (Bom). Aggrieved by the ld. Commissioner of Income Tax (Appeals)'s order, the assessee as well as Revenue are in appeal before us.

5. The first issue that came up for consideration in the assessee's appeal for assessment year 2004-05 is disallowance of bad debt written off in respect of non rural branches u/s. 36(1)(vii) of the Income Tax Act, 1961. The ld. Authorized Representative for the assessee, at the time of hearing submitted that the issue is squarely covered in favour of the assessee by the decision of the ITAT, in assessee's own case for assessment year 1989-90 to 1992-93 and for assessment year 2009-10 wherein under similar circumstances, the ITAT has allowed bad debt written off in respect of non rural branches. On the other hand the ld. Departmental Representative strongly supported the order of the ld. Commissioner of Income Tax (Appeals).

6. We have heard both the parties and perused the material available on record. The issue of bad debt written off in respect of non rural branches is no longer resintegra. The ITAT, in assessee's own case for assessment year 2009-10 in ITA

Nos. 1561 and 3438/Mum/2013 has considered the issue of bad debt written off in respect of non rural branches u/s. 36(1)(vii) of the Income Tax Act, 1961. The ITAT by following the decision of the Hon'ble Supreme Court in the case of *Catholic Syrian Bank Ltd. vs. CIT* [2012] 343 ITR 270 has held that the bad debt written off in respect of non rural branches is allowable as deduction u/s. 36(1)(vii) of the Income Tax Act, 1961. The relevant portion of the order is extracted below:

> 13. The above contention of the appellant banks does not impress us at all. Merely because the orders of the Special Bench of the ITAT were not assailed in appeal by the Department itself, this would not take away the right of the Revenue to question the correctness of the orders of assessment, particularly when a question of law is involved. There is no doubt that the earlier order of the CIT(A) had merged into the judgment of the Special Bench of the ITAT and attained finality for that relevant year. Equally, it is true that though the Full Bench of the Kerala High Court specifically overruled the Division Bench judgment of that very Court in the case of *South Indian Bank Ltd* (*supra*), it did not notice any of the contentions before and principles stated by the Special Bench of the ITAT in its impugned judgment. As already noticed, the question raised in the present appeal go to the very root of the matter and are questions of law in relation to interpretation of Sections 36( )(vii) and 36(1)(viia) read with Section 36(2) of the Act. Thus, without any hesitation, we reject the contention of the appellant banks that the findings recorded in the earlier assessment years 1991-1992 to 1993-1994 would be binding on the Department for subsequent years as well.

7. In this view of the matter and consistent with the view taken by the co-ordinate Bench of the Tribunal in assessee's own case for assessment year 2009-10, we direct the Assessing Officer to allow deductions towards bad debt written off in respect of non rural branches.

8. The next issue that came up for our consideration in the assessee's appeal for assessment year 2004-05 is disallowance of expenditure incurred in relation to exempt income u/s. 14A of the Income Tax Act, 1961. The Assessing Officer has disallowed a

sum of Rs.1,28,93,92,000/- u/s. 14A of the Act on the ground that the assessee has earned exempt income in the form of dividend, however, failed to disallow the expenditure incurred in relation to exempt income being interest expenditure and other expenditure. The ld. Authorized Representative for the assessee, at the time of hearing submitted that the issue is squarely covered in favour of the assessee by the decision of the ITAT in assessee's own case for assessment year 2009-10, wherein the ITAT under similar set of facts has deleted the additions made by the Assessing Officer and also directed to restrict the disallowance of expenditure @ 2% of exempt income.

9. Having heard both the parties and perusing the materials available on record we find that the ITAT, in assessee's own case for assessment year 2009-10 in ITA No. 1561 and 3438/Mum/2013 dated 03.10.2017 has considered the issue of disallowance of expenditure in relation to exempt income u/s. 14A of the Act. The Co-ordinate Bench after considering the relevant facts in light of section 14A has deleted the additions made by the Assessing Officer and restricted the addition to the extent of 2% of the exempt income by holding that the assessee's own interest free funds compressing its share capital and reserves are more than the investments made which yield tax free exempt income. The ITAT further observed that on perusal of the Assessing Officer's order, it is clear that the Assessing Officer has not recorded any satisfaction with regard to the claim of the assessee that it has earned exempt income without attributing any expenses relating thereto with reference to the books of accounts which is a pre-condition for invoking the provisions of the section 14A of the Act. The relevant portion of the order is extracted below:

9. We have carefully considered the submissions of rival parties and perused the orders of lower authorities. The undisputed facts of the case are the assessee‟s own interest free funds comprising its own funds and other interest free funds availed with the assessee were far more than the investment made in securities which yielded tax free exempt income. Moreover, the perusal of the AO‟s order reveals that the AO has not recorded any satisfaction with regard to the claim of the assessee of exempt income without attributing any the expenses relating thereto with reference to the books of accounts which is a pre-condition for invoking the provisions of the section 14A r.w.r 8D as has been decided by the Hon‟ble Apex Court in the case of „Godrej & Boyce Manufacturing Co. Ltd. V/s DCIT (2017) 81 taxmann.com 111(SC), wherein it has been held that the AO has to record the satisfaction that the assessee has incurred any expenditure in relation of the earning of earning income after examining the records and books of accounts maintained by the assessee and thus the AO has to be record his satisfaction I.T.A. No.1525 and 364 9/Mum/2013 And I.T.A. No.1561 and 3438/Mum/2013 with regard to the correctness of the claim of the assessee otherwise the provisions of section 14A can not be applied. We find merit in the plea of the ld.AR that in absence of any satisfaction recorded by the AO no disallowance could be made u/r 14A r.w.rule 8D. However, to maintain the consistency with the decision of the co-ordinate bench of the Tribunal, we think it fit and reasonable which has been an alternative prayer by the counsel during the course of hearing that the disallowance of 2% be made as has been made by the Tribunal in the assessment year 1998-99 and 1999- 2000. The operative part of ITA No 4449/Mum/2003 AY 1998-99 is reproduced as under (para 5):-

> "5. Before us, Ld Counsel for the assessee demonstrated that assessee has sufficient funds and therefore, no disallowance is called for on account of interest vide Rule 8D(2)(ii) of IT Rules, 1962. In this regard, he relied on various decisions including that of the judgment of the Hon‟ble jurisdictional High Court in the case of Reliance Utilities & Power Ltd [2009] 313 ITR 340, with which we agree. Regarding the disallowance out of administrative expenses, Ld Counsel for the assessee submitted that disallowance of a reasonable percentage of the exempt income is an accepted method of quantifying the disallowance of expenses for the AYs prior to AY 2008-2009, the year of amendment to Rule 8D of IT Rules, 1962. In this regard, Ld Counsel for the assessee filed decisions of the Tribunal in the cases of DCIT vs. HDFC Bank Ltd in ITA Nos. 4529/M/2005 and others, dated 29.6.2011 and order of the Tribunal in the case of Bank of India vs. ACIT in ITA No.1498/Mum/2011 for the AY 2001-2002, dated 9.4.2014 and submitted that disallowance @ 1% of the exempt income in the case of Banks is accepted as a „reasonable basis‟. Further, he also referred to the decision of the Tribunal in the case of M/s. Godrej Agrovet Ltd vs. ACIT in ITA No.1629/Mum/2009, dated 17.9.2010, which was subsequently ratified by the Hon‟ble jurisdictional

> High Court in the same case. This case is relevant for the proposition that the I.T.A. No.1525 and 364 9/Mum/2013 And I.T.A. No.1561 and 3438/Mum/2013 disallowance of 2% of the exempt income is found reasonable by the Hon‟ble High Court."

Accordingly, we set aside the order of the ld.CIT(A) and direct the AO to make addition to the 2% of the exempt income. This ground of appeal is partly allowed.

10. In this view of the matter and consistent with the view taken by the Co-ordinate Bench in the assessee's own case for earlier years, we direct the Assessing Officer to restrict the disallowance worked out u/s. 14A to 2% of the exempt income.

11. The next issue that came up for our consideration from the Revenue's appeal as well as the assessee's cross objection is disallowance of diminution in value of investment held as stock-in-trade.

12. The Assessing Officer has made addition of a sum of Rs.92.32 crs. on account of diminution in value of investment held as stock-in-trade on the ground that the loss incurred on account of diminution in value of investment is only an notional loss, therefore, cannot be allowed as deduction. It is the contention of the assessee that the bank is following the method of accounting for treatment of investment held as stock-in-trade as per which it values its closing stock at cost or market value whichever is less and/or whatever loss incurred on account of diminution in value of investment charged off to the profit and loss account as a loss. The assessee further contended that it is following similar method of accounting for treatment of investment held as stock-in-trade for earlier years which has been accepted by the Department. Therefore, there being any change in the facts, there is no reason for the Assessing Officer to make the additions towards loss incurred on diminution in value of investment held as stock-in-trade. In this

regard, he relied upon the decision of the *Bank of Baroda* (supra) and Hon'ble Supreme Court in the case of *United Commercial Bank vs. CIT* [1999] 240 ITR 355 (SC).

13. We have heard both the parties and perused the materials available on record. The Assessing Officer has disallowed diminution in value of investment held as stock-in-trade on the ground that the loss incurred by the assessee on account of diminution in value of investment is a notional loss which cannot be allowed as deduction. According to the Assessing Officer, the method of accounting followed by the assessee is not in conformity with the tax laws, therefore, the method of accounting followed by the assessee cannot determine the income taxable under the Act. Therefore, he opined that the loss incurred on diminution in value of investment is not allowable while computing the income from business. It is the contention of the assessee that the bank is following method of accounting as per which it values its investment held as stock-in-trade as on the end of the financial year at cost or market value whichever is less and the difference arising as a result of this valuation is treated as business loss. The assessee further contended that any fluctuation in valuation of the stock is to be treated as loss or income of the assessee for the year in question.

14. Having heard both the sides, we find merits in the arguments of the assessee for the reason that the issue has been considered by the Hon'ble Bombay High Court in the case of *Bank of Baroda* (supra), wherein it was held that the bank valued its investments at cost or market value whichever is less and the difference arising as a result of the valuation has to be allowed to the assessee as a loss. The Hon'ble Supreme Court in the

case of *United Commercial Bank* (supra) has taken a similar view, wherein it was held that stock valuation is admittedly a method of accounting, the assessee-bank can claim the benefit of stock valuation 'at cost or market value, whichever is lower' only if such method is actually followed and adopted by it in preparing the final accounts. Yet another case, the ITAT Bangalore Bench in the case of *ACIT vs. State Bank of Mysore* in ITA No. 706/Bang/2008 has held that the method by which the assessee bank is valuing its securities is in accordance with the accounting principle by treating it as stock-in-trade. The ld. Commissioner of Income Tax (Appeals) after considering the relevant facts and also by following the decision of the Hon'ble Bombay High Court in the case of *Bank of Baroda* (supra) has rightly deleted the additions made by the Assessing Officer. The Revenue has failed to bring on record any contrary decision to support its argument. Therefore, we are of the considered view that the ld. Commissioner of Income Tax (Appeals) was right in deleting the additions towards diminution in value of investment held as stock-in-trade. We d not find any infirmity in the orders of the ld. Commissioner of Income Tax (Appeals). Hence, we are inclined to uphold the findings of the ld. Commissioner of Income Tax (Appeals) and reject the grounds raised by the Revenue.

15. In the result, the appeal filed by the assessee in ITA No. 1431/Mum/2011 for the assessment year 2004-05 is allowed and the appeal filed by the Revenue in I.T.A. No.1891/Mum/2011 for assessment year 2004-05 and cross objection filed by the assessee in CO No. 200/Mum/2013 for assessment year 2004-05 are dismissed.

ITA No. 3757/Mum/2014 (Assessee's appeal) and 3958/Mum/2014 (Revenue's appeal)
(A.Y. 2010-11)

16. The first issue that came up for our consideration in Revenue's appeal for assessment year 2010-11 is disallowance of bad debt written off u/s. 36(1)(vii) of the Act. We have considered the similar issue in ITA No. 1431/Mum/2011, for assessment year 2004-05. The reasons given by us in ITA No. 1431/Mum/2011 shall mutatis mutandis apply to this appeal also. Therefore, for the similar reasons, we direct the Assessing Officer to delete the additions towards disallowance of bad debt written off u/s. 36(1)(vii) of the Act.

17. The next issue that came up for our consideration in Revenue's appeal is the disallowance of broken period interest. The ld Authorized Representative for the assessee, at the time of hearing submitted that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Bombay High Court in the case of *American Express International Banking Corpn. Vs. CIT* [2002] 258 ITR 601 (Bom) and also the decision of the Hon'ble Supreme Court in the case of *CIT vs. Citi Bank N. A.* in Civil Appeal No. 1549 of 2006 vide order dated 12.08.2008. The ld. Authorized Representative further submitted that the issue is also covered by the decision of the Hon'ble Bombay High Court in the assessee's own case in ITA No. 137 of 1997 dated 09.10.2012.

18. Having heard both the sides, we find that the ld. Commissioner of Income Tax (Appeals) has deleted the additions made by the Assessing Officer towards broken period interest by following the decision of the Hon'ble Bombay High Court in the case of *American Express International Banking Corpn.* (supra) and also the decision of

Hon'ble Supreme Court in the case of *Citi Bank N. A.* (supra). A similar view has been expressed by the Hon'ble Bombay High Court in the case of assessee's own case vide order dated 09.10.2002 (Supra). The Revenue has failed to bring on record any contrary decision to support its case. Therefore, we are of the considered view that the ld. Commissioner of Income Tax (Appeals) was right in deleting the addition made. We do not find any error in the orders of the ld. Commissioner of Income Tax (Appeals). Hence, we are inclined to uphold the findings of the ld. Commissioner of Income Tax (Appeals) and reject the grounds raised by the Revenue.

19. The next issue that came up for our consideration for assessment year 2010-11 is the disallowance of expenditure incurred in relation to exempt income u/s. 14A of the Act. We have considered similar issue in ITA No. 1431/Mum/2011 for the assessment year 2004-05. The reasons given by us in ITA No. 1431/Mum/2011 shall mutatis mutandis apply to this appeal. Therefore, for similar reasons, we direct the Assessing Officer to restrict the disallowances to 2% of exempt income.

20. The next issue that came up from assessee's appeal is the additions towards unreconciled credit entries in the nostro mirror accounts credited to the profit and loss account. The ld. Authorized Representative for the assessee submitted that the issue is covered in favour of the assessee by the decision of Hon'ble High Court of Karnataka in the case of *CIT vs. Karnataka Vikas Grameen Bank* [2016] 282 CTR 517 (Kar). The ld. Authorized Representative further submitted that the ITAT Bangalore 'A' Bench in the case of *M/s. Canara Bank vs. CIT* in ITA No. 390/Bang/2011 dated 08.06.2012 has

considered a similar issue in light of the provisions of section 35A of the Banking Regulation Act, 1949 and also in light of the Master Circular issued by the Reserve Bank of India dated 30.03.2007, wherein it was held that though the unreconciled entries in the nostro mirror accounts is routed through profit and loss account, it does not have character at income charged in the hands of the assessee bank and hence, it cannot be brought to tax.

21. Having heard both the sides and considered the material on record, we find merits in the arguments of the assessee for the reason that the Hon ble High Court of Karnataka in the case of *Karnataka Vikas Grameen Bank* (supra), has considered a similar issue in light of the provision of section 35A of the Banking Regulation Act and Master Circular issued by the RBI held that where amount in question had remained with assessee-bank owing to fact that payees or holde s of draft/pay orders had not encashed them, section 41(1) could not be invoked. The ITAT Bangalore 'A' Bench in the case of *M/s. Canara Bank* (supra) has also considered the similar issue and after considering the provision of section 35A of the Banking Regulation Act, 1949 and Master Circular of RBI dated 30.03.2017 has held as under:

> 6.3 In the instant case, as mentioned earlier, the Reserve Bank of India had categorically directed that the amounts are to be kept in general reserve account though routed through the profit and loss account. It is the direction of the RBI that the assessee bank is under an obligation to meet the future claims out of General Reserve So created. The RBI had also stipulated that the amounts so transferred shall not be used in the form of distribution of dividend. In this context of the matter, it cannot be said that it is the money of the assessee bank. The RBI instructions are issued as per section 35A of the Banking Regulation Act, 1949 and the same are binding on the assessee bank. Therefore, though it is routed through the profit and loss account, it does not have income character in the hands of the assessee bank and hence, it cannot be brought to tax. Accordingly, the CITs

> order invoking revisionary jurisdiction under section 263 of the Act directing the Assessing Officer to assess an amount of Rs.52.77 crores is not justified and therefore, is quashed to that extent. It is ordered accordingly.

22. In this view of the matter and respectfully following the decision of the Hon'ble High Court of Karantaka in the case of *Karnataka Vikas Grameen Bank* (supra), we are of the view that the unreconciled credit entries in the nostro mirror accounts credited to the profit and loss account cannot be treated as income of the assessee. Hence, we direct the Assessing Officer to delete the additions made towards unreconciled entries routed through profit and loss account.

23. The next issue that came up from assessee's appeal is non applicability of provisions of section 115JB of the Income Tax Act, 1961 to banking companies.

24. The ld. Authorized Representative for the assessee, at the time of hearing submitted that the issue is squarely covered in favour of the assessee by the ITAT 'C' Bench in the assessee's own case for assessment year 2006-07 in ITA No. 1528/Mum/2011 dated 12.08.2016, wherein under similar set of facts the ITAT had held that the provisions of section 115JB is not applicable to the banking companies. The relevant portion to the order is extracted below:

> 4. We have considered the rival contentions of the parties and perused the various decisions cited by ld. AR of the assessee. In the case of Krung Thai Bank (supra), the identical Grounds of appeal was considered by the Co-ordinate Bench of this Tribunal i.e. the applicability of provisions of Section 115JB and after considering the applicability with regard to section 115JB, the Co-ordinate Bench held as under:
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> > *"Learned Counsel for he assessee, however, contends that the provisions of MAT do not apply to the assessee, and, for this reason, very foundation of impugned re-assessment proceedings is devoid of legally sustainable merits. His line of reasoning is this. The provisions of MAT can come into play only when the assessee prepares its profits and loss account in*

accordance with Schedule VI to the Companies Act. It is pointed out that, in terms of the provisions of Section 115 JB (2), every assessee is required to prepare its profit and loss account in terms of the provisions of Part II and III of Schedule VI to the Companies Act. Unless the profit and loss is so prepared, the provisions of Section 115JB cannot come into play at all. However, the assessee is a banking company and under proviso to Section 211(2) of the Act, the assessee is exempted from preparing its books of accounts in terms of requirements of Schedule VI to the Companies Act, and the assessee is to prepare its books of accounts in terms of the provisions of Banking Regulation Act. It is thus contended that the provisions of Section 115JB do not apply in the case of banking companies which are not required to prepare the profit and loss account as per the requirements of Part II and III of Schedule VI to the Companies Act. Since the provisions of Section 115 JB do not apply to the assessee company, the reasons recorded for re-opening the assessment are clearly wrong and insufficient. We are urged to quash the reassessment proceedings on this short ground.

Learned Departmental Representative, on the other hand, vehemently relies upon the orders of the authorities below and submits that there is no specific exclusion clause for the banking companies, and in the absence of such a clause, it is not open to us to infer the same. The submissions of the learned counsel, ITA No. 4355/Mum/2008 M/s. Times Bank Limited, , 8 according to the departmental representative, are clearly contrary to the legislative intent and plain wordings of the statute. The plea of the assessee is indeed well taken, and it meets out approval. The provisions of Section 115 JB can only come into play when the assessee is required to prepare its profit and loss account in accordance with the provisions of Part II and III of Schedule VI to the Companies Act. The starting point of computation of minimum alternate tax under section 115 JB is the result shown by such a profit and loss account. In the case of banking companies, however, the provisions of Schedule VI are not applicable in view of exemption set out under proviso to Section 211(2) of the Companies Act. The final accounts of the banking companies are required to be prepared in accordance with the provisions of the Banking Regulation Act. The provisions of Section 115 JB cannot thus be applied to the case of a banking company.

In view of the above discussions, and following the view taken by a coordinate bench in the case of Maharashtra State Electricity Board Vs. JCIT (82 ITD 422), which holds that provisions of MAT cannot be applied to electricity companies for mutually similar reason we uphold the plea of the assessee. The provisions of Section 115 JB do not apply to the assessee, and, as such, the Assessing Officer was in error in concluding that income had escaped assessment in the hands of the assessee. The very initiation of reassessment proceedings was bad in law, and we quash the same".

5. The similar view was approved by the Co-ordinate Bench in case(s) of Union Bank of India, Times Bank Ltd., State Bank of Hyderabad, Dena Bank and UCO Bank (Supra) by Mumbai Tribunal, and in case of UCO Bank(supra) by

Co-ordinate Bench of Kolkata Tribunal, thus the Ground of appeal raised by assessee is allowed.

25. In this view of the matter and consistent with the view taken by the co-ordinate Bench in the assessee's own case, we direct the Assessing Officer to delete the adjustments made towards book profit computed u/s. 115JB of the Income Tax Act, 1961.

26. In the result, the appeal filed by the assessee in ITA No.3757/Mum/2014 for assessment year 2010-11 is allowed and the appeal filed by the Revenue in ITA No.3958/Mum/2014 for assessment year 2010-11 is dismissed.

27. In the result, following are the results for all the appeals and cross objection:

ITA Nos.	**Assessee/Revenue appeal**	**Assessment year**	**Result**
ITA No. 1431/Mum/2011	Assessee'appeal	2004-05	Allowed
ITA No.1891/Mum/2011	Revenue's appeal	2004-05	Dismissed
CO No. 200/Mum/2013	Assessee's CO	2004-05	Dismissed
ITA No.3757/Mum/2014	Assessee's appeal	2010-11	Allowed
ITA No.3958/Mum/2014	Revenue's appeal	2010-11	Dismissed

Order pronounced in the open court on 08.06.2018

Sd/- Sd/-

(Mahavir Singh) (G. Manjunatha)

न्यायिक सदस्य / Judicial Member लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 08.06.2018

व.नि.स./Roshani, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**