THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI

BEFORE
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA Nos.4253&2236/Del/2011
ITA Nos.1788 &4722/Del/2012
ITA Nos.2406/Del/2013
ITA No.2469/Del/2014
Assessment Years: 2006-07 to 2010-11

Punjab National Bank, The Chief manager, PNB, HO, Accounts & Taxation Department, 5, Sansad Marg, New Delhi. PAN: AAACP0165G.	vs	Addl Commissioner of Income-tax, Range-14, New Delhi.

ITA No.2469/Del/2011
ITA No. 4718/Del/2012
ITA No.2966/Del/2013
Assessment Years: 2007-08, 2009-10 & 2010-11

Addl. Commissioner of Income-tax, Range-14, New Delhi	vs	Punjab National Bank, PNB, HO, The Chief manager,Accounts & Taxation Department,5, Sansad Marg, New Delhi. PAN: AAACP0165G
(Appellant)		(Respondent)

Assessee by: S/Shri K. Sampath & V. Raja Kumar, Advocate
Department by: Smt. Sulekha Verma, CIT,DR.

Date of hearing: 04.12.2018
Date of Pronouncement: 09.01.2019

ORDER

PER BENCH :

Aggrieved by the orders of the learned Commissioner of Income Tax (Appeals)-XVII, New Delhi (for short "Ld. CIT(A)") for the assessment years 2006-07 to 2010-11, both the assessee and the revenue preferred these appeals challenging the deletion and sustaining certain additions made by the Ld. AO in respect of these years while framing the assessment.

2. The Punjab National bank (hereinafter referred to as "assessee") is a bank incorporated under the Banking Companies (Acquisition and Transfer) of Undertaking Act, 1970 and is regulated by the Reserve Bank of India. For all the Assessment Years between 2006-07 to 2010-11 the assessee bank filed their returns of income and while framing the assessment, Ld. Assessing Officer made cer ain additions. In the 1st appeal preferred by the assessee in respect of all these years, Ld. CIT(A) deleted certain additions and sustained certain additions. Aggrieved by the findings where the additions were sustained by the Ld. CIT(A), assessee preferred ITA Nos.4253 & 2236/Del/2011, ITA Nos. 1788 & 4722/Del/2012, ITA Nos.2406/Del/2013 & 2469/Del/2014 and whereas challenging the deletion of the additions, revenue preferred ITA No.2469/Del/2011, ITA No. 4718/Del/2012, ITA No.2966/Del/2013. We shall proceed to deal with the issues involved in each of these appeals hereunder.

Asstt. Year 2007-08 (ITA 2236/2011 and ITA 2469/Del/2011)

3. In respect of this AY, assessee preferred ITA 2236/Del/2011 and revenue preferred ITA 2469/Del/2011. There are four grounds of appeal in 2236 /Del/2011 and nine grounds in ITA No. 2469 /Del/ 2011. Grounds number 1 and 4 in ITA 2236 /Del/ 2011 and Ground number 9 in ITA 2469 /Del/2011 are general in nature and do not require any adjudication. While other grounds are dealt with separately appeal wise, since Gr. No.2 in ITA 2236/2011 and Gr. No. 5 of ITA 2469/Del/2011relates to common issue regarding disallowance of expenditure under Section 14 A, they are dealt together.

Gr. No.2 in ITA 2236/2011 and Gr. No. 5 of ITA 2469/Del/2011 relating to disallowance of expenditure under Section 14 A of the Act.

4. During the financial year 2006-07, assessee earned exempt income amounting to Rs.58,39,06,899/- from dividend and tax-free income on account of other securities, but the assessee has not disallowed any expense under section 14 A of the Income Tax Act, 1961 (hereinafter, for short "the Act"). Learned Assessing Officer observed that the assessee, having, infrastructure and common personnel for earning income under various heads and by using its administrative, managerial, and infrastructural setup for earning all the income which includes the exempt income, that the expenditure in relation to the exempt income is inbuilt and debited under various heads of profit and loss account, thereby calling for the application of Section 14 A of the Act read with rule 8D of the

Income Tax Rules, 1962 (for short "the Rules"). On this premise learned Ld. AO disallowed the expenditure to the tune of Rs.58,74,00,000/-under section 14 A of the Act.

5. Ld. CIT(A) while noticing the order of the Hon'ble Bombay High Court in the case of Godrej Boyce &Manufacturing Company Limited held that Rule 8D is applicable from the Assessment Year 2008-09, but further held that where investment has been made in the assets, income from which is exempt from tax the assessing officer is duty bound to make the disallowance under Section 14A by adopting a rational basis and on that aspect this Tribunal in several judgments held that 10% of exempt income can be taken as reasonable disallowance. Following the same Ld. CIT(A) directed the disallowance to 10% of the exempt income. Revenue challenged the finding of the Ld. CIT(A) to restrict the disallowance under section 14 A of the Act whereas the assessee is aggrieved by the sustaining the disallowance at 10%.

6. It is the argument on behalf of the assessee that the investments in securities made by the banking concern are part of the business of banking and therefore the expenses incurred for the purpose of such investment is the business investment. He further submitted that as is held by the Hon'ble Apex Court in the case of Maxopp investment Ltd vs. CIT (2018) 402 ITR 640 (SC), holding of the investment becomes a business activity of the assessee as a business proposition and whether the dividend is earned or not becomes immaterial. He further brought to our notice the observations of the Hon'ble Apex Court to the effect that in case

where the bank holds the securities or shares as stock in trade it would be a quirk of fate that when the investee company declared a dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. He, therefore, submits that inasmuch as the Hon'ble Apex Court made a clear distinction between the proposition laid down in the case of Maxopp investments Ltd vs. CIT (2011) 15 taxman.com 390 (Delhi) and the proposition laid down in the case of PCIT vs. State Bank of Patiala (2017) 78 taxmann.com 3 He submitted that though the Hon'ble Apex Court rejected the theory of dominant intention, did not laid down the proposition that irrespective of the fact whether or not the shares held by the bank are stock in trade, every investment made by the bank would trigger the applicability tea of section 14 A of the Act basing on the theory of apportionment of expenditure between the taxable and non-taxable income.

7. Per contra, basing on the CBDT circular No.5/2014 dated 11th February 2014 and the decision of the Hon'ble Apex Court in Maxopp investment Ltd (supra), the Ld. DR advanced the augments and she invited our attention to the observations of the Hon'ble Apex Court vide paragraph nos. 32 to 39 and submitted that the decision of the Hon'ble Apex Court constitutes an authority in law to say that disallowance under section 14A(1) attracts to an expenditure in relation to the tax exempt income irrespective of whether such tax exempt income has been earned during the year or not or earned incidentally with business income.

8. We have carefully perused the decision in the case of Maxopp Investment Ltd versus CIT (2018) 91 taxman.com 154 (SC) wherein the Hon'ble Apex Court considered two cases wherein the question of predominant intent of investment in shares was pleaded, though on different facts, on the ground that the objective of investing in shares was not to earn the dividend income, but to either retain controlling interest over the company in which the investment was made or to earn the profit from trading in shares. The question was whether the disallowance under section 14A of the Act could be invoked in the cases where exempt income was earned from shares held as "trading assets" or "stock in trade". The first case relates to Maxopp investment Ltd and the second case relates to the case of State Bank of Patiala. In the case of Maxopp investment Ltd., the assessee company is in the business of finance, investment and was dealing in shares and securities; that they held the shares and securities, partly as investments on the "capital account" and partly as "trading assets" for the purpose of acquiring and retaining control over its group companies, primarily Max India Ltd.; and that the profits resulting on the sale of shares held as trading assets were duly offered to tax as business income of the assessee. In the case of State Bank of Patiala the assessee has exempt income in the form of dividend was earned by the bank from securities held by as stock in trade. The Hon'ble Supreme Court was considering the question that has arisen under varied circumstances where the shares/stocks were purchased by a company for the purpose of gaining control over the said company

or as "stock in trade", though incidentally income is also generated in the form of dividends as well.

9. It was argued before the Hon'ble Apex Court that though incidentally income was also generated in the form of dividends, the dominant intention for purchasing the shares was not to earn the dividend income but to acquire and retain the controlling business in the company in which shares were invested, or for the purpose of trading in the shares as business activity. After considering the entire case law on this aspect in the light of the peculiar facts involved in both the matters, the Hon'ble Apex Court vide paragraph No. 39 and 40 held as follows:

> *39) In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'. What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10 (34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share and Stock Brokers P Ltd. case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned.*
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> *40) We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That*

view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business Activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn pro its. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, t e appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove.

10. It is, therefore, clear from the above observations of the Hon'ble Apex Court that depending upon the facts of each case, the expenditure incurred in acquiring the shares will have to be apportioned. Hon'ble Apex Court held that the Tribunal and the Hon'ble High Court of Punjab and Haryana arrived at a correct conclusion by setting aside the disallowance under section 14A of the Act in respect of the dividend earned on the shares held as stock in trade, because such shares were held during the business

activity of the assessee and it is only by a quirk of fate that when the investee company declared dividend, those shares were held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits.

11. Hon'ble Apex Court made clear distinction of this case from the case of Maxopp investment Ltd where the assessee knew that whenever dividend would be declared by the investee company such dividend would necessarily be earned by the assessee and assessee alone, and it would be in the common knowledge of the assessee that such shares would generate dividend income as well as and when such dividend income is generated that would be earned by the assessee only. Hon'ble Apex Court in unequivocal terms held that in contrast, where the shares are held as stock in trade, this may not be necessarily a situation and the main purpose was to liquidate those shares whenever the share price goes up in order to earn profits. Hon'ble Apex Court, therefore, while rejecting the theory of dominant purpose in making investment in shares- whether it was to acquire and retain controlling interest in the other company or to make profits out of the trading activity in such shares - clearly made a clear distinction between the dividend earned in respect of the shares which were acquired by the assessee in their exercise to acquire and retain the controlling interest in the investee company, and the shares that were purchased for the purpose of liquidating those shares whenever the share price goes up, in order to earn profits. It is, therefore, clear that though not the dominant purpose of acquiring the shares is a relevant for the purpose of invoking the provisions under section 14 A of the Act,

the shares held as stock in trade stand on a different pedestal in relation to the shares that were acquired with an intention to acquire and retain the controlling interest in the investee company.

12. Further, it is brought to our notice that in assessee's own case in ITA No.1519/Del/2016 and 7106/Del/2017 for the assessment year 2012-13, a coordinate bench of this Tribunal considered the arguments on either side and reached the conclusion that, insofar as the assessee bank is concerned section 14A of the Act has no application in view of the above law laid down by the Hon'ble Apex Court in the case of Maxopp investments Ltd, (supra).

13. We, therefore, while respectfully following the above decision, hold that no addition in case of the assessee under section 14-A is sustainable. Hence, ground of appeal of assessee is allowed and the ground of appeal of the Revenue is dismissed.

ITA 2236/2011

Gr. No.3 (Transfer from inter branch block accounts to reserve through profit and loss account)

14. During the year, the assessee bank had reduced an amount of Rs.7,14,00,803/- from its computation of income on account of "amount transferred from old block account in profit and loss account" and submitted that it has been following a credit or generating system in respect of inter-branch transactions wherein credit entries are generated first, which can be set off only by a corresponding debit entry and the said credit entries depict basically a credit to the concerned branch for debit to be discharged

by such branch later. It was further submitted that the entry making office as well as the branch to which the credit is given are both the part of the same legal entity and the credit surplus relates to entries, in respect of monies deposited in one branch for issuing drafts payable in another branch of the bank and which are not matched by the debit entries from the other branch.

15. Ld. AO treated the amount transferred as income in its profit and loss account as miscellaneous income, whereas the assessee bank treated them as income in its profit and loss account and appropriated to its general reserve, but this appropriation is below the line, as such, the assessee had initially treated the amount as its income, but latter reduced it from its computation of income. It has been the augment on behalf of the assessee bank that these facts are covered by the case decided by the Hon'ble Apex court in the case of T.V. Sundaram Iyengar and Sons Ltd., 222 ITR 344.

16. Ld. CIT(A) on a consideration of the matter, found that on similar facts in the assessment year 2005-06, his predecessor, vide order dated 8/3/2007, discussed the issue at length and reached the conclusion that it cannot be said that the amount in the case of the assessee cannot be treated as income at a particular point of time, merely because at the time of receipt, the said amount was not income. Ld. CIT(A) in this case also followed the above reasoning and upheld the addition made by the Ld. AO.

17. It is brought to our notice that the above findings of the 1st appellate authority in respect of the assessment year 2005-06 was reversed by a coordinate bench of this Tribunal by the order dated

15/01/2011 in ITA No. 2047/Del/2007, wherein the relevant portion reads that,-

> "31. The assessee being a public sector bank, all its transactions are under the scrutiny of the RBI and to some extent, even the accounting entries have to follow circulars and guidelines issued by the RBI from time to time. In fact, the accounts and transactions of the bank are always subject to the inspection by the Reserve Bank of India. It is clear from the circulars extracted above and there is no dispute as regards these matters. In terms of the instructions issued way back on 28th February 1991, the bank is required to show the net balance in inter branch accounts and under 'Other Liabilities and Provisions' (Schedule 5) when in credit and under 'Other Assets' (Schedule 11) when in debit. The Reserve Bank of India, in the course of its inspection of the banks, has found that large transactions remained to be reconciled in the inter-branch accounts which was a cause for serious concern. It is in this background that the Reserve Bank of India has directed the banks to first segregate the credit entries outstanding for more than five years in the inter-branch accounts and transfer them to a separate account called 'blocked accounts and show them under 'other liabilities' in the balance sheet. The balance in the blocked account will be reckoned for the purpose of maintenance of CRR and SLR. Any adjustment from the blocked account should be permitted only with the authorization of two officials, one of whom should be outside the branch concerned, preferably from the controlling/head office if the amount exceeds Rupees One Lakh. In pursuance of the above directions contained in the Circular dated 28th February, 1991 and 27th July, 1998, the assessee bank has undertaken its exercise as is clear from its letter dated 19th December, 2003 to the Reserve Bank of India. The assessee has explained the balance outstanding and movement therein year-wise in the blocked accounts as is clear from the letter extracted earlier. While seeking permission to transfer the amount lying in the blocked account, the legal opinion and the opinion of the Chartered Accountant were obtained including the opinion of Shri Kanwarjit Singh, retired Commissioner of Income Tax on the subject issue. Based on the above opinions, the audit

committee of the Board and the Board of Directors of the bank sought approval of the Reserve Bank of India for transfer of `387.07 crores lying in the blocked account to the general account and retaining the amount of `25 crores in the blocked account to be utilized for further claims. The Reserve Bank of India permitted the transfer of `387.07 crores to general reserve account subject to the conditions Vide its letter dated 29.6.2004 (supra).

32. A careful reading of the various instructions issued by the Reserve Bank of India from time to time to PNB shows that the disputed amounts were part of inter branch transactions and there was a mismatch of the transactions between different branches of the same bank and it was not reconciled and these are all carried forward from so many years from the bank and its branches. During the course of hearing, it was revealed to us that these were the transactions prior to computerization in the bank wherein each of the transactions were recorded in the books and was communicated through the internal advices by different branches of the bank to other involved branches. The manual accounting has generated these outstanding transactions in its inter branch accounts although at the time of consolidation of the bank accounts, all these accounts should have been squared up by the accounting process of consolidation. Unfortunately, this was not done and the Reserve Bank of India was aware of all these imbalances in the reconciliation of the inter branch transactions. None of these transactions, as we see from the records presented before us and the information availabl with us, show that the involved transactions have revenue implications by nature which could spring the income subject to assessment under the Income-tax Act. To put it straight, they were not on the revenue account but they were more in the nature of the inter branch transactions. In a bank of the size of the Punjab National Bank, when the accounting was done manually earlier, all these differences have cropped up and the management was not able to reconcile these balances. In the inter account branch transactions, in none of the proposals made by the bank or the assessment made by the Reserve Bank of India, it is discernible that these entries or differences have any implications on the revenue transactions of the bank. Therefore, there is an absolute absence of any flavour of income either in the receipt or in the payment or

accounting transactions in what is known as inter branch transactions. It is just like the money of the bank as though under circulation between different branches. Over the years, the differences have been carried forward and have become significant and material figures. But the basic character remains the same that it has no character of income in any of these transactions either when the transaction arose for the first time or was dealt with by the different branches. It is difficult to say that these unreconciled inter branch transactions should be automatically be treated as income of the bank arising in the course of its business Activity. It is nobody's case that these transactions arose out of revenue transactions of any of the branches involved. These are mainly inter branch transactions which remained unreconciled In a way as the bank has pleaded, it is a transaction of its own money with different branches. The Reserve Bank of India, while giving permission to close these inter branch differences, has clearly stipulated that the amount so transferred shall not be treated as available for distribution of dividends, meaning thereby the Reserve Bank of India has not permitted the bank to treat it as an income once and for all and it has always stipulated certain conditions and prescribed certain procedures and formalities to safeguard the interest of the bank as a whole but that does not take away the basic nature of the amounts in question. It cannot in any way convert the transactions of this nature as revenue transactions of the bank necessitating the same to be treated as income on the revenue account. At least, the Reserve Bank of India which was ceased of the issue when it was posed to it did not accept the claims of the assessee that this should be treated as miscellaneous income, meaning thereby, these amounts in question, even by efflux of time, cannot be treated as income for the obligations on the part of the bank is not extinguished and Reserve Bank of India has made it very clear that the assessee bank will be under obligation to discharge all the obligations arising therefrom. The assessee cannot be said to be making profit from transferring as though from one pocket to the other pocket when it had operated the inter branch accounts of this nature. In our view, the decision of the Hon'ble Apex Court in the case of Sir Kikabhai Premchand Vs. CIT - 24 ITR 506 and Hon'ble Calcutta High Court in the case of Betts Hartley Huett and Co. Ltd.

Vs. CIT - 116 ITR 425 are clearly in favour of the assessee. The accounting entries, which according to the Revenue, yield the income are in the inter branch accounts of the bank. It cannot be said that transactions between the branch can result in an income to the bank as a whole. No man can make profit to himself by the transactions with the self. Each branch of the bank is the assessee itself. So, the transactions between different branches cannot, in our view, give rise to generation of income which can attract the said transactions to tax.

33. The facts of the case of the assessee are exactly similar to the facts before the Hon'ble Calcutta High Court in the case of Betts Hartley Huett and Co. Ltd. (supra). In that case, it was held that the transaction between the head office of the assessee and its branch in India was a transaction between the principal and principal. In law, there cannot be a valid transaction of sale between the branch and its head office. As it is ultimately based on a proposition that no person can enter into contract with one self. Debiting or crediting one s account cannot alter the legal position. Applying the same principle as enunciated by the Hon'ble Calcutta High Court, it cannot be said that the transactions between the branches gave rise to an income assessable under the Income-tax Act. The substance of the entire transaction, in our view, appears to be pure accounting lapses on the part of the bank or its branches to properly reconcile the transactions. In fact, it is always understood that all these accounts must have cancelled each other. It did not take place that way due to human errors or lack of advice forthcoming as regards the closure of the accounts. In any case, any imbalance in the inter branch accounts, in our considered view, cannot give rise to a taxable income under the Income-tax Act. The Assessing Officer as well as CIT-DR has heavily relied upon the decision of the Hon'ble Supreme Court in the case of T.V.Sundaram Iyengar & Sons Ltd. - 222 ITR 344. In that case, the assessee received the deposits from customers in the course of its business and transferred the amounts which were not claimed by the customers to its profit & loss account. The Assessing Officer was of the view that the sums in question have become the income of the assessee because of the expiry of limitation period or other statutory or contractual rights. The amounts had the character of income and therefore, assessable to tax. The

Hon'ble Supreme Court held that although the amounts received originally were not in the nature of an income, the amounts remained with the assessee for a long period 33 unclaimed by the trade parties. By the lapse of time, the claim of the deposit became time barred and the amount attained a totally different quality. It became a definite trade surplus. The assessee itself treated the money as its own money and taken the amount to its profit & loss account. The amounts were assessable in the hands of the assessee. Here, in this case, the facts are slightly different. The amounts are lying in the accounts which are known as inter branch accounts. It is expected that all these inter branch accounts should get squared up on consolidation. Due to human error of accounting or lack of proper advise from different branches, the amounts in question have remained either in debit or credit in different inter branch accounts and the bank has admittedly not reconciled these accounts for over a long period of time. It is very difficult to say that these have traces of income either at the time of receipt or at the time of write off to the profit & loss account. In fact, the Reserve Bank of India has permitted them to close these differences to the profit & loss account with a rider that the sums in question are not permitted by the Reserve Bank of India to be used in the form of distribution of div dends and it was specifically made clear by the Reserve Bank of India that the obligation to discharge the liabilities arising thereunder is upon the bank. Mean ng thereby, there is no question of the amoun s being treated as income in the hands of the bank. We must appreciate that these transactions in the inter branch accounts are mere accounting entries. When the transactions were made to these accounts initially, these were not in the nature of income either of the branches involved or of the bank as a whole. It is a part of transactions on the real accounts and not on what is known as revenue accounts. Therefore, it is difficult to say that the amounts in question bear the same character as unclaimed deposit received from the customers by the assessee T.V.Sundaram Iyengar & Sons Ltd.

34. In the light of the discussions of these facts, it is difficult to say that either the decision of the Apex Court in the case of T.V.Sundaram Iyengar & Sons Ltd. (supra) or other decisions including the decision of Hon'ble Delhi

> High Court in the case of CIT Vs. Rajasthan Golden Transport Co.(P) Ltd. - 249 ITR 723 are applicable to the facts of the case. In fact, the Hon'ble Delhi High Court in the case of Rajasthan Golden Transport Co.(P) Ltd. (supra) was concerned with the amounts received in the course of trade transactions. In the decision of the Hon'ble Delhi High Court, the amounts in question were held to be taxable under Section 41(1) of the Act. As regards the applicability of Section 41(1), we may again state that such provisions of Section 41(1) cannot be invoked to bring these amounts in question to be taxed as a part of the receipt in the aforesaid provision. The Revenue has to first establish that the sum in question which is now being brought to tax has once been allowed in the past as a deduction while computing the income of the bank. It is not the case of the Revenue or at least the Revenue has not brought any material to show that the sum in question forming part of the so-called inter branch transactions were once allowed by the Revenue as a deduction in the computation of profits and gains of business. When that primary requirement is absent the question of bringing the sums in question to tax under Section 41(1) may not be legally permissible to the Revenue. In the light of the discussions above, we do not agree with the stand of the Department that the amounts in question which are part of the inter branch transactions requires to be brought to tax as income of the assessee in the year in question."

18. The above ratio is followed by another coordinate bench of this Tribunal in assessee's own case in the orders dated 16/03/2018 in ITA No. 4843/Del/2010 for Assessment Year 2006-07.

19. Since there is no change in the facts and circumstances involved in the case of the assessee in all these years, we are of the considered opinion that it's not desirable to take a different view in assessee's own case in the absence of any change of facts and circumstances. We, therefore, while respectfully following the above decision do not find any illegality or irregularity in the

findings of the Ld. CIT(A), delete the addition made by the Ld. AO on this score.

ITA No. 2469/Del/2011

Ground No.1:Loss on revaluation of investment held in H TM category:

20. This grounds relates to the disallowance of loss on revaluation of investment held in HTM category of Rs.301,34,13,448/-.

21. On examination of the annual accounts, Ld. AO found that the assessee claimed loss on revaluation of investment amounting to Rs. 301,34,13,448/-on account of amortization of premium paid at the time of purchase of securities under HTM (Held To Maturity) category. Assessee treated the securities under HTM category as a stock in trade. Contention of the assessee was that as per RBI guidelines dated 16 October 2000, investments classified under HTM category need not be market to market and are carried at acquisition cost unless these are more than the face value, in which case the premium should be amortized for the period remaining to maturity.

22. On this aspect the Ld. assessing officer had taken the view that the securities were sold before maturity and therefore the amortization of premium over the remaining life of the securities cannot be worked out correctly and for working out the amortization, the period for which the assessee held the securities are to be known, and for the want of such information coupled with the fact that the assessee sold HTM securities as per its will before maturity Ld. Assessing officer to draw the inference that the loss

on account of the amortization of the premium could not be treated as provision for ascertained liability.

23. Ld. CIT(A) considered this issue in the light of the precedent in assessee's own case and also in the case of CIT vs. Nedungadi bank Ltd (2003) 264 ITR 545 (Kerela), and while following the same, observed that the amortization, which is as good as depreciation, merits the same treatment which is applicable to depreciation and thereby Ld. CIT(A) held the issue in favour of the assessee.

24. It is the submission of Ld. AR that the issue in question has squarely been covered by the orders of a coordinate bench of this Tribunal in assessee's own case in Assessment Year 2006-07 in ITA No.4241/Del/2010 dated 16/03/2018.

25. Per contra, it is the argument of Ld. DR that during the course of assessment proceedings, the assessee had given the submission that the they have been claiming the amortization of premium of HTM securities in the light of the RBI guidelines and master circular; that the assessing officer did not accept the claim of the assessee as securities were purchased from market at market value and the investment was shown at a lower price by writing off the premium paid which is not allowable under the provisions of the Act as per the detailed discussion made by the assessing officer in the assessment order. She further submitted that the order of the 1st appellate authority in the case of the assessee for the assessment year 2006-07 shows that the assessee had shown the securities of HTM category as capital gain.

26. We have gone through the record and perused the order dated 16/03/2018 in ITA No. 4241/Del/2010 in assessee's own case, wherein after considering the case law on this aspect including the decision of the Hon'ble Apex Court in the case of UCO Bank vs. CIT 240 ITR 355 (SC) and the Master Circular of the RBI on the aspect of valuation of investments applicable to all banks prescribed in case of acquisition cost of securities classified under HTM category and also the order dated 25/10/2011 of a coordinate bench of this Tribunal in assessee's own case for the assessment year 2000-06 in ITA No. 2873/Del/2007, the Tribunal held that,-

> "….. We find that the Tribunal in the AY 2005-06 vide order dated 25.10.2011 held as under:-
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> > "The next dispute in the Revenue's appeal relates to the deletion of disallowance of depreciation in investment of Rs 48,82,82,014/-.
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> > We have heard both the sides and find that the issue is fu ly covered by the earlier years' orders right from AY 2001-01 to 2004-05. The learned CIT(A) has only followed the principle laid down by the Apex Court in the case of UCO Bank – 240 ITR 355. In the light of the aforesaid binding decision of the Apex Court, we do not find any infirmity in the order of CIT(A). The same is dismissed.
> >
> > 35. The learned DR could not point out any specific error in the order of the learned CIT(A). He also could not bring any material on record to show that the order of the Tribunal for AY 2005-06 was varied in appeal before any higher authorities. Hence, we find that no good reasons to interfere with the orders of learned CIT(A) which is confirmed…"

27. It is not the case of the revenue also that there is any change of facts involved in the present appeal from those involved in ITA 2873/Del/2007 or ITA No. 3843 and 4241/Del/2010 so that this Tribunal can take a different view. In the absence of any change of facts and circumstances, we find it difficult to take a different view in the assessee's own case for a subsequent year, from the view that was taken consistently quite for a long time. We, therefore, respectfully following the decisions above find that there is no reason to interfere with the findings of the Ld. CIT(A) on this aspect and the same needs to be upheld. We therefore do not find any merits in the appeal of the revenue on this ground and the same is accordingly dismissed.

Gr. No.2 Depreciation on investment held in AFS and HFT categories

28. Learned assessing officer found that the assessee had claimed deduction of Rs.288,11,30,000/- on account of depreciation on investment on account of valuation of securities under the category held for trading (HFT) and available for sale (AFS). Assessee banked upon the RBI guidelines and submitted that the investment portfolio of the banks is required to be classified under 3 categories, namely, held to maturity (HTM), held for trading (HFT) and available for sale (AFS); that in the investments classified under HTM category need not be market to market and are carried at an acquisition cost unless these are more than the face value, in which case the premium should be amortized over the period remaining to maturity; that in case of HFT and AFS, the depreciation/appreciation is to be aggregated

scrip wise and only netted appreciation, if any, is required to be provided for in the accounts; that the said treatment is also disclosed as per paragraph No.5 of Significant Accounting Policies (schedule-17) adopted to the audited accounts. It was further submitted by the assessee that for the purpose of income tax, bank is treating all securities (except investment in subsidiaries and joint ventures) as stock in trade; that the interest received on such securities and profit/loss on sale of such securities irrespective of its categorization into HTM, HFT and AFS in the books, is offered as business income/loss and the same is also being assessed by the Department as business income/loss; and the diminution in value of such securities is considered as business loss and likewise really been depreciation on valuation of such securities, if any, is offered to tax. Assessee placed reliance on the decision of the Hon'ble Kerala High Court in the case of CIT vs. Nedungadi bank Ltd., 264 ITR 545 for the principle that the appreciation/loss in the value of investment was allowable expenditure.

29. Ld. Assessing officer after considering the submissions of the assessee, formed an opinion that though it was correct that the depreciation/loss is booked in accordance with the Banking Regulation Act and the revaluation is done in accordance with the guidelines of the RBI, however, the fact remains that these investments have not been shown in the books as "stock in trade" and its resultant profits on sale are not enhanced by the value of depreciation in subsequent years when these investments are actually sold.

30. In appeal, Ld. CIT(A) considered this issue at length and by following the orders of his predecessor in assessee's own case for the assessment years 2000-01 to 2005-06 decided the issue in favour of the assessee bank in the light of the decision of the Hon'ble Apex Court in the case of UCO Bank vs. CIT 240 ITR 355 (SC).

31. It is the argument of the learned DR that though the assessee has been relying on the orders of the Tribunal for the Assessment Years 2005-06 and 2006-07, facts involved in those matters are entirely different from the facts involved in this matter inasmuch as in Assessment Year 2005-06 the issue before the Tribunal was regarding the acquisition of broken period interest whereas for the assessment year 2006-07 the assessee debited the securities and stock in trade and claimed deduction of loss on the valuation of securities at the year end on the basis of cost or market price, whichever is lower and confirmed by the orders of the 1st appellate authority. It is the submission of the Ld. DR that in the present appeal the fact is that the revenue is challenging the deduction on the ground that the assessee on one hand is taking benefit of deduction on diminution of the value of securities in the closing stock and on the other hand not carrying forward the impact of this claim of diminution on the value of securities in the opening stock. Ld. DR placed reliance on the decision of the Hon'ble Apex Court in the case of Southern technologies Vs. ACIT [2010] 187 Taxman 346 (SC).

32. We have perused the record and the case law relied upon by both the sides. It is an admitted fact that the assessee being a Nationalized Bank is governed by the Banking Regulation Act, 1949; that they are following mercantile system of accounting both for book keeping purpose as well as for tax purposes; that they have been valuing the stock-in-trade (investments) "at cost" in the balance sheet whereas for the same period of time the appellant has been valuing the very same investment "at cost or market value whichever is lower" for income tax purposes; that it is an established rule of commercial practice and accountancy that closing stock can be valued at cost or market price, whichever is lower. It could be seen from the record that the question as to the reflection of the investments being stock in trade in the audit report, profit and loss account and the annual report with the question of the value of securities as embedded in the closing stock and the corresponding figure as becoming the opening stock in the subsequent year was adverted to Indian judicial precedents.

33. Further as understood from the argument of the Ld. DR, her contention is that no opening stock or closing stock of securities mentioned in the profit and loss account though the assessee had claimed their investment in securities as stock in trade; and that if the investments are stock in trade, it should be reflected in the return of income, audit report, profit and loss account and the annual report and the diminution of the value of securities will be embedded in the closing stock and the corresponding figure will become the opening stock in the subsequent assessment years. On this she submitted that when once the assessee reduces the

depreciation and reaches a particular figure as the book value of the securities, then naturally when the securities were sold in the subsequent years the profit should be estimated with reference to the reduced value of the Scrips in the earlier years, but however in the case of the assessee, the cost of the security after reducing the same because of the appreciation was not changed or adjusted in the books resulting in the books reflecting the low profit and the resultant offering of less amount to tax.

34. The plea of the assessee, on the other hand, is that the treatment of the profit on sale of securities is a two-fold. Firstly, the profit on sale of securities will be lower due to the non attachment of cost of securities with deregulated appreciation claimed, but simultaneously at the second stage of the said transaction, claim of depreciation on securities for the year is also reduced to the extent of a community depreciation claimed earlier and resultantly the profit for the year is worked out correctly after taking into account both the folds of the transaction collectively.

35. On a careful consideration of the matter, we are of the considered opinion that it's not the case of the Ld. assessing officer that in this particular year in respect of any particular security such a thing had happened. It's not the case of the Ld. assessing officer that with reference to any particular scrip there was depreciation claimed in the earlier years, the loss was claimed as deduction but without showing the reduced value of the scrip as the opening value of the stock and thereby on the sale of the scrip the cost price but not the reduced price was taken as the cost of acquisition and

thereby any less amount was offered to tax. The entire edifice of the case of revenue is based on the theoretical suspicion of the Ld. assessing officer that inasmuch as the assessee has not been showing in the balance sheet not the reduced value of the scrip but the cost price of the scrip as the value of the scrip, when the securities were sold it is the cost price of the scrip but not the reduced value of the scrip that was taken to estimate the profits and as a consequence of which the less amount has been offered to tax. It is a verifiable fact with reference to the sales of securities, if any, that took place during the year or earlier or subsequent years. Such an exercise has not been undertaken by the learned assessing officer but merely basing on the figures reflected in the balance sheet which was prepared in accordance with the RBI guidelines, learned assessing officer reached a conclusion that there was an escapement of income due to the preparation of the balance sheet in a particular way, as prescribed by the RBI.

36. If we appr ciate the facts of this case in the light of the decision of the Hon'ble Apex Court in UCO Bank vs. CIT 240 ITR 355 (SC) it is clear that since the assessee has been maintaining its accounts on mercantile system, they are entitled to show his real income by taking into account market value of such investments in arriving at real taxable income. All the aspects argued by the Ld. DR were considered by the Hon'ble Apex Court in the case of UCO Bank vs. CIT 240 ITR 355 (SC) and were held in favour of the assessee. The decision in Southern technologies Ltd (supra) has no application to the facts of the case.

37. There is consistency of the facts on this aspect quite for a long time and all possible arguments have come before the adjudicatory authorities. On a careful consideration of the matter in the light of the submissions on either side, we are of the considered opinion that the question is now fully covered by the orders of the Tribunal in assessee's own case for the earlier years, and while respectfully following the same, we hold the issue in favour of the assessee.

Gr. No.3 Loss on shifting of securities from AFS/HFT categories to HTM category

38. The assessee bank, at the beginning of the year had shifted securities worth Rs. 6 176 crore from HTM category to AFS/HFT category. RBI guidelines provide that the transfer of scrips from one category to another, under all circumstances, should be done at the acquisition cost/book value/market value of the date of transfer, whichever is the least and interpretation, if any, on such transfer should be fully provided for. On this score the assessee booked the depreciation/loss of Rs.386,75,73,660/-.

39. Learned Assessing officer, however, disallowed the same by saying that the loss claimed on such transfer is merely notional loss which does not exist. Learned assessing officer had taken the view that the securities under HTM categories have also sold before maturity, and therefore they would not enjoy the special status in the books of accounts of the assessee as emphasized by the RBI guidelines; that the chain of securities from one category to another category does not amount to any financial transaction and so the loss claimed is not an allowable expenditure; that the assessee had

tried to club such loss with a loss on actual sale of HTM securities which is not correct since there is only a notional loss; and therefore the shifting of the securities from one category to another category under RBI guidelines should not call for any variation in profit under the provisions of the Act inasmuch as the nature and character of the security remains the same being stock in trade.

40. It is the submission of the Ld. AR that this question is now fully covered by the decision of a coordinate bench of this Tribunal in assessee's own case for the Assessment Year 2005-06 in ITA No.2873/Del/07 dated 25 October 2011 and Assessment Year 2006-07 in ITA number 4241/Del/2010 dated 16 March 2018.

41. Per contra, it is the argument of Ld. DR that the facts involved in this case for this year are entirely different from the facts involved in the case of the State Bank of Mysore, in as much as in the case of state bank of Mysore the issue was regarding the shifting of securit es from stock in trade to capital asset whereas in the present appeal the LearnedAssessing Officer challenged the deduction on the ground that there is no transfer of securities from one head to other for the purpose of valuation as all category is under stock in trade. She invited our attention to the circular of RBI in respect of amortization of premium to state that the RBI directions are only disclosure norms, they have nothing to do with the computation of total taxable income under the Income-tax Act or with the accounting treatment and that the RBI directions only lay down the manner of presentation of NPA provision in the balance sheet of the NBFC. She further submitted that the NBFCs

have to accept the concept of income as evolved by the RBI after deducting the provision against NPA, but such treatment is confined to presentation/disclosure and has nothing to do with the computation of taxable income under the Income tax Act. She placed reliance on the decision of the Hon'ble Apex Court in Southern technologies vs CIT 328 577 in support of her about contentions.

42. In reply, it is submitted by the counsel for the assessee that the assessee in the present appeal is not an NBFC. According to the Ld. AR the decision of the Hon'ble Apex Court in the case of United Commercial Bank versus CIT (1999) 240 ITR 355 (SC) is applicable to the facts of the case. He further submitted that the loss shown in the profit and loss account and claimed in the return is not notional, but real loss as was considered by the Hon'ble apex court in the case of UCO bank Vs. CIT 240 ITR 355.

43. It could be seen from the impugned order that the Ld. CIT(A) considered this aspect at length and found that the facts relating to this issue are similar to those involved in the case of the State Bank of Mysore vs. DCIT of the Bangalore bench of ITAT in ITA No. 647/Bang/2008, wherein vide paragraph number 7.2 to 7.5 it was held that in view of the clear-cut guidelines of the RBI and the order of the Tribunal in ITA No.112/bang/2008 dated 3rd December 2008 in the case of Corporate Bank vs. ACIT and ACIT vs. Vijaya Bank, the claim of the assessee towards provision of deposition on account of shifting of securities from AFS category to HTM category was allowable deduction.

44. It is not the case of the revenue that the facts of this case are not similar to the facts of the case for any earlier years. It shall be kept in mind that the bank will never hold the assets merely for dividends or further appreciation of the value of the asset and all the three types of assets namely, held to maturity, available for sale and held for trading of the investments to maintain the statutory liquidity requirement. We therefore do not find any difference of facts on this score and hold that the decision of the Bangalore Tribunal in the case of State Bank of Mysore (supra) is very much applicable to the facts of this case also. While respectfully following the directions referred to above, we are of the considered opinion that the loss arising on shifting of securities from AFS/HFT categories to HTM ategory is allowable. Ground of appeal is dismissed.

Gr. No.4 PNB Employees Pension Fund Trust

45. This ground relates to the disallowance of contribution made to PNB Employees Pension Fund Trust of Rs.215,56,00,000/- which the assessee claims to be its legitimate business expenditure.

46. According to the Ld. AO, this is not a contribution to the pension fund and the provisions of Section 43(B) are not applicable to the assessee bank. According to the Ld. AO, no deduction of such payment is allowable to the assessee bank, even though the same was actually paid and the provisions under section 36(1)(iv) has to be looked into, according to which any sum paid by the assessee to an employer by way of contribution to the Recognized Provident Fund or an approved superannuation fund or any fund of

similar nature is allowable as a deduction, subject to condition laid down under Rule 87 and 88 of Income tax Rules, 1962. Ld. AO held that such contribution should not be in the nature of annual contributions of fixing the amounts or annual contributions on some definite basis.

47. Assessee argued before the Ld. CIT(A) that the Banking Companies Undertaking Act of 1970 created PNB also and provides for the creation of a pension trust of which employees of bank will become members and the bank is required to contribute the fund towards pension fund trust as per actual evaluation carried out at the end of the financial year It was further argued that carrying up banking business and funding the pension trust out of the income of banking are made obligated under the Act and the provisions of pension fund trust regulation makes it amply clear that payment directly attributable, compulsory and statutory for carrying on business on banking and should be allowed as a deduction. It was further submitted that the liability on account of contribution o pension fund is a recurring liability and not a one-time liability. It was submitted that rule 87 applies to ordinary annual contributions and not to anything other than annual contribution. It was further submitted that keeping in view the actual method of accounting, consistently followed by the bank, the aforesaid expenditure is an allowable business expenditure being incurred wholly and exclusively for the purpose of business and compliance to AS-15, subject to provisions of section 43B.

48. Ld. CIT(A) found that on similar issue in the assessment year 2005-06, the issue was decided in favour of the assessee vide order dated 14 June 2010 vide paragraph number 10.7 and 10.8 wherein it was held that similar expenses were allowed in earlier years in the assessments made under section 143 (3) of the Act and the decision of Delhi ITAT in the case of DCIT verses Ranbaxy laboratories Ltd (2009) 124 TTJ (Delhi) 771 wherein the allowability of expenses towards provision for Pension Fund were held to be allowable expenses and section 43B has no application, is applicable. The fact that the assessee had actually contributed/paid the amount to pension fund makes the case of the assessee even stronger. Following the above orders, Ld. CIT(A) held that the addition of Rs.215.56 crores has to be deleted.

49. We do not find any difference in the facts of the case from their earlier years to render the binding precedents followed by the Ld. CIT(A) inapplicable to the case on hand. In the absence of any change of facts and circumstances, we find it difficult to take a different view. In these circumstances, while respectfully following the above line of decisions, we dismiss this ground of appeal of the Revenue.

Gr. No. 6: Depreciation on goodwill

50. Assessee claimed depreciation on goodwill at Rs.4,59,28,688/-. Ld. AO disallowed the depreciation on goodwill stating that the goodwill cannot be considered as business or commercial right within the meaning of Section 32 (1) of the Act read with appendix 1 of the Rules. Ld. AO further noted that while

holding so he was following the discussion made by his predecessors in the Assessment Year 2003-04 and 2004-05 on this issue.

51. It was contended by the assessee before the Ld. CIT(A) that for those years the first appellate authority allowed the deposition on goodwill and by following the same Ld. AO should have allowed the same.

52. Ld. CIT(A) in the impugned order observed that this issue has been recurring from the Assessment year 2003-04 and the assessee has been making the claim of deposition and goodwill claim to have acquired an amalgamation of the erstwhile Nedungadi Bank Limited with th assessee bank, and after discussing the issue in detail the first appellate authority allowed the deposition on goodwill for the Assessment year 2003-04 and was followed in the subsequent years. Ld. CIT(A) noted that it is only a consequen ial claim during this year also and in view of the fact that his predecessors held the issue in favour of the assessee consistently for all these years, while following the same, we direct the Ld. AO to allow deposition on WDV of the block goodwill for this year also.

53. Facts are similar for these years. Nothing was pleaded before the Ld. CIT(A) to take a different view from the view that was taken for the earlier years. We do not find anything perversity in this finding of the Ld. CIT(A) and it needs to be upheld. We accordingly uphold the same and dismiss this ground of appeal of revenue.

Gr. No.7 Disallowance under section40-A (3)

54. Ld. AO disallowed an expenditure of Rs.35,380/-incurred by the assessee on the payments made to a carpenter for making wooden boxes for currency chest, on the ground that it was incurred in contravention of section 40A (3) of the Act . Ld. CIT(A) considered the submissions of the assessee that the payment made to a carpenter for making wooden boxes for currency chest is not in violation of section 40A (3) of the Act and directed the Ld. AO to delete the same. Nothing is brought to our notice as to how this finding of the Ld. CIT(A) cannot be sustained. In the absence of any cogent reasons, we do not propose to disturb the logical finding reached by the Ld. CIT(A). We, for the same reason, dismiss this ground of appeal of the revenue.

Gr. No. 8 Set off of loss from venture capital fund

55. Assessee claimed loss of Rs.2,64,66,898/- under the head "income from other sources" and has adjusted the same against the income decla ed under various other heads, namely, house property and business income etc.. Assessee also declared capital gain on venture capital fund on which tax was shown as payable at special rates of 10% and 20% depending upon long-term and short-term capital gains and also upon with STT are without STT. Further the assessee claimed LTCG on VCF with STT amounting to Rs.9,70,57,421/- as exempt. According to the Ld. AO, if any loss had arisen to the assessee on account of VCF, the same should be adjusted against the profits of the same head and only net income be charged to tax in that particular head, but since LTCG on VCF

with STT described as exempt, any loss arising out of such VCF is also exempt and not allowed to be set off against the other heads of income. Ld. AO therefore, disallowed the claim in respect of loss from venture capital fund under the head "other sources" to the tune of Rs.2,64,66,898/-.

56. It was argued by the assessee before the Ld. CIT(A) that the assessee bank, in the return of income, offered for tax the income received from VCF in accordance with section 115U of the Act,i.e. the amount which was capital gain in the books of VCF and the amount which was dividend income in the books of VCF was given the similar treatment in the return of income of the assessee bank; and that similarly the loss of Rs.2,64,66,898/- from "other sources" in the books of venture capital fund was treated as a loss under the head "income from other sources" in the return of the assessed bank.

57. Ld. CIT(A) considered the submissions of the assessee in the light of the assessment order and found that the amount of loss from VCF was determined as per Form 64 received from various venture capital funds which is in accordance with law land, and therefore, granted relief to the assessee in respect of the loss claim from venture capital fund under the head "other sources".

58. Revenue could not demonstrate before us as to how this finding of fact by the Ld. CIT(A) is perverse or illegal or irregular. When once the loss from VCF was determined as per form 64 received from various venture capital funds in accordance with the law on this aspect, it is difficult for us to hold that the findings of

the Ld. CIT(A) are liable to be reversed merely because the Ld. AO opined that the expenditure were in relation to happening of income from venture capital fund under the head short-term capital gain and long-term capital gain; that, therefore, this expenditure has to be adjusted against the income from venture capital fund offered at low rate of tax; and that since the assessee has not adjusted the loss against the income, taxed at reduced rates ranging from 0% to 20% depending upon the nature of investment, such claim is not allowed. With this view of the matter, we uphold the findings of Ld. CIT(A) on this aspect and dismiss the ground of appeal.

AY 2006-07 (ITA No. 4253/Del/2011 and ITA 1788/Del/2012)

54. In respect of Asstt. Year 2006-07 the assessee filed ITA No. 4253/Del/2011 and ITA 1788/Del/2012. In ITA No. 4253/Del/2011 assessee challenged the additions made on account of contribution to pension fund and also the direction of Ld. CIT(A) to the Assessing Officer to verify the working of disallowance under section 14A; whereas in ITA 1788/Del/2012 the assessee challenged the correctness of the finding of the Ld. CIT(A) in passing the rectification order directing the disallowance at 10% of the expenses claimed by the assessee.

55. It could be seen from the record that during the financial year 2005-06 assessee earned tax free income of Rs.213.23 crores and the ld. AO disallowed a sum of Rs.116.58 crores whereas the assessee disallowed a sum of Rs. 2,07,994/-in their computation of income. In the appeal initially CIT(A) upheld the disallowance,

resulting in the assessee filing ITA No.4253/Del/2011. However, subsequently pursuant to the decision of the Hon'ble jurisdictional High Court in the case of Maxopp investment Ltd vs. CIT (2012) 347 ITR 272 holding that Rule 8D was not applicable to assessment years earlier than 2008-09, an application for rectification was filed. CIT(A) accepted the contention advanced on behalf of the assessee bank that Rule 8D cannot be invoked in the years earlier to 2008-09 and in the place of the earlier disallowance of Rs.119.58 crores, he disallowed 10% of the expenses claimed by the assessee bank which came to Rs.25,43,29,633/-. Assessee challenges this in ITA 1788/Del/2012.

56. Ground No. 1 and 4 in both the appeals are general in nature that do not require any adjudication. Now we shall advert to the question of permissibility of disallowance under section 14A of the Act in respect of he tax-free income earned by the assessee bank.

57. In view of our finding in the preceding paragraphs on the issue relating to the disallowability of expenditure under section 14A insofar as the assessee bank is concerned for the AY 2007-08, we reached a conclusion that such disallowance is not permissible in view of the decision of the Hon'ble Apex Court in the case of Maxopp investments Ltd (supra). Hence we hold that no apportionment of expenditure could be made in respect of the tax-free income earned by the assessee bank. We, therefore, allow the grounds of appeal of the assessee on this aspect in both the appeals.

58. Now coming to ground No.2 of ITA 4253/Del/2011, it relates to the issue of allowability of the direction of Rs.121.91 crores incurred on account of contribution to pension fund. During the year the assessee claimed deduction of Rs.431 crores under section 43B of the Act on payment basis which includes the amount determined for the year that is Rs.309.09 crores and also Rs.121.91 crores towards liabilities provided in the profit and loss account. He found that the amount of Rs.121.9 crores can be allowed as deduction for the year only if the assessee had disallowed/added back the amount in the computation of income of earlier years when the same was debited to profit and loss account of those years. Following the decision of the ITAT in the case of the DCIT vs Ranbaxy laborato ies Ltd, Ld., CIT(A) allowed the deduction to the tune of Rs 309.09 crores and directed the learned AO to verify whether the assessee had disallowed/added back the amount in the computation of income of earlier years when the same was debited to profit and loss account of those years.

59. We do not find any illegality or irregularity in the direction given by the Ld. CIT(A) as the assessee can show before the AO as to whether they have disallowed/added back the amount in the computation of income of earlier years when the same was debited to profit and loss account of those years. Hence, we do not find any substance in this ground and the same is dismissed.

60. ITA No. 1788/Del/2012 is accordingly allowed and ITA No. 4253/Del/2011 is allowed in part.

2008-09 (ITA No.4718/12 & ITA No.4722/12)

61. In respect of the AY 2008-09, assessee filed ITA No 4722/Del/2012 whereas Revenue filed ITA No 4718/Del/2012. Other grounds being different in these two appeals, and being dealt with appeal wise, Ground No.2 in ITA No.4722/12 and Ground No.6 in ITA No.4718/12 relating to the issue of applicability of Section 14-A and Rule 8D of the Rules are dealt with together.

Ground No.2 (ITA No.4722/12) and Ground No.6 (ITA No.4718/12):

62. During the year assessee earn the tax free income of Rs.67,77,69,486/- and disallowed a sum of Rs.5,47,59,010/- initially and subsequently, by way of revised return withdrawn the same. Learned AO made a disallowance of Rs.80.38 crores by invoking the provisions u/s 14A of the Act in terms of Rule 8D(2)(ii) and (iii) of the Rules. However, learned CIT(A) deleted the addition made under Rule 8D(2)(ii) to the extent of Rs.72.84 crores and sustained the addition of Rs.7.54 crores made under Rule 8D 2)(iii) of the Rules. Challenging the deleted part, revenue preferred Ground no.6 in ITA No.4718/Del/2012 whereas challenging the sustained part, assessee preferred Ground No.2 in ITA No.4722/Del/2012. Since this issue was directly and substantially dealt with as Gr. No.2 in ITA 2236/2011 and Gr. No. 5 of ITA 2469/Del/2011 (supra) for the Asstt. Year 2007-08, we dismiss the ground raised by the revenue and allow the ground of the assesssee.

ITA No.4718/12

Ground No.1:

63. This ground relates to the disallowance of loss on revaluation of investment/securities held under "HELD TO MATURITY (HTM)" amounting to Rs.30.843 crore and the assessee based their case on RBI guidelines to diminution of the premium paid on acquisition of securities wherever the loss of security was more than face value of the securities. This issue is substantially and directly, but for the change in the amount, is covered by Ground No.1 in ITA No.2469/Del/2011 (supra). For the reasons recorded above on this issue, we hold that the orders of the learned CIT(A) have to be upheld and accordingly dismiss this ground of appeal.

Ground No.2:

64. This issue relates to the disallowance of depreciation on securities held under the head "Available for Sales (AFS)" and held for trading (HFT) category amounting to Rs.85.75 crores. Though the assessee bank claimed this deduction to be the depreciation of investment, learned CIT(A) recorded that it is actually diminution in the value of securities. This issue is directly and substantially covered by Ground No.1 in ITA No.2469/Del/2011 (supra). For the reasons recorded above on this issue, we hold that the orders of the learned CIT(A) have to be upheld and accordingly dismiss this ground of appeal.

Ground No.3:

65. This issue relates to the disallowance of loss arising out of conversion of securities held under the AFS category under the HTM categories amounting to Rs.18.41 crores which the assessee bank claims as loss on shifting of securities from AFS to HTM category since this amount was claimed as loss in return filed. This issue is directly and substantially covered by Ground No.3 in ITA No.2469/Del/2011 (supra). For the reasons recorded above on this issue, we hold that the orders of the learned CIT(A) have to be upheld and accordingly dismiss this ground of appeal.

Ground Nos. 4 & 5:

66. These grounds relate to the disallowance of amount attributed by the assessee bank to PNB Employees Pension fund trust which the assessee claims to be a legitimate expenditure during the year and claimed deduction. This issue is covered by ITA No.4241/Del/2010 for Asstt. year 2006-07 vide paras 40 to 43 in assessee's own case and also dealt with in this order vide Ground No.4 in ITA No.2469/Del/2011 for the Asstt. Year 2007-08. For the reasons recorded therein, we uphold the order of the ld. CIT(A) and accordingly dismiss this ground of appeal.

Ground No.7:

67. This ground relates to disallowance of depreciation of goodwill amounting to Rs.3,45,00,000/- which the assessee claimed in respect of the goodwill of the erstwhile Nedungadi Bank Ltd., which merged with the assessee in the Assessment Year 2003-04. This issue is dealt with as Ground No.6 in ITA

No.2469/Del/2011. For the reasons recorded therein, we uphold the order of the ld. CIT(A) and accordingly dismiss this ground of appeal.

68. Ground No. 8 is general in nature and does not require any adjudication.

ITA 4722/Del/2012
Ground No. 3:

69. This ground relates to the disallowance of Rs.57,45,97,786/- claimed as deduction under section 36(1)(viii) of the Act. It could be seen from the record that the assessee bank did not make any claim under section 36(1)(viii) of the Act in the original return of income filed on 26/9/2008, but this claim was made only in the revised return filed subsequently.

70. Ld. AO noted that the assessee bank did not create any special reserve in the annual accounts of the company in order to claim deduction under section 36(1)(viii) of the Act and such a fact was not disputed by the assessee bank before the Ld. AO. The fact remains that the special reserve under section 36(1)(viii) of the Act to the tune of Rs. 57,45, 97,786/- was created only on 30/3/2010 in the financial year 2009-10 relevant for assessment year 2010-11 that is 2 years thereafter. Ld. AO had taken the view that the assessee bank being a public limited company cannot maintain a special reserve subsequent to the approval of its annual accounts by their AGM and the method followed by the assessee to calculate the direction under section 36(1)(viii) of the Act was not correct as profit derived from eligible business and computed under the head "profits and gains of business or profession" is only entitled for

deduction under section 36(1)(viii) of the Act while the assessee had claimed in profit "attributable" eligible business and computed the same on proportionate basis based on the total fund deployed method, as a result of which Ld. AO disallowed the entire deduction claimed under section 36(1)(viii) of the Act.

71. Before Ld. CIT(A) assessee placed reliance on the decision of a coordinate bench of this Tribunal in Power Finance Corporation limited verses JCIT (2008) 16 DTR (Delhi-Trib) 519 where it was held that there is no time limit for creation of special reserve under section 36(1)(viii) of the Act and that the entire direction claimed in the revised return filed on 30th March 2010 was allowable. Ld. CIT(A) held that such decision is binding precedent on the aspect. CIT(A), however, held that inasmuch as the ld. AO was not satisfied with the method followed by the assessee bank that they had not correctly calculated the deduction under section 36( )(viii) of the Act and the Ld. AO was of the view that the assessee bank had claimed profit attributable to eligible business and computed the same on proportionate basis, based on the total fund deployed method, Ld. CIT(A) directed the assessee to furnish the correct computation of eligible deduction under section 36(1)(viii) of the Act before the Ld. AO within 30 days and the AO shall verify the same to grant deduction.

72. We do not find anything illegality or irregularity in this direction given by the Ld. CIT(A). As a matter of fact Ld. CIT(A) treated this claim of the assessee as allowable and remanded matter for the limited purpose of submission of the current computation

under section 36(1)(viii) of the Act. We, therefore, uphold the directions of the Ld. CIT(A) and dismiss this ground of appeal.

Ground No. 4: Profit on sale of NPAs

73. This ground is in respect of profit on sale of NPAs to the tune of Rs.7,40,74,586/-. During the year the assessee bank sold four non-performing assets for Rs.7,42,00,000/-, the book value of which was found to be Rs.1,25,414/- and thereby had earned a profit of Rs.7,40,74,586/-, but without offering such an amount to tax on the ground that this gain was to be utilized for adjusting against future loss on sale of other non-performing assets as per RBI guidelines. Ld. AO found that during the relevant assessment year the assessee bank had recov red Rs.83,16,87,004/- from written off non-performing assets and after setting off the same against the provision for bad debts of Rs.67,15,59,994/- and the balance amount of Rs 16,01,27,010/- was offered to tax. Ld. AO, therefore, by applying the provisions under section 41(4) of the Act brought the excess amount received on sale of NPAs to tax.

74. Ld. CIT(A) recorded that it was not clear from the assessee submissions the method of accounting followed by the assessee for claiming Loss/gain on sale of non-performing assets. According to him the submission of the assessee that it had not claimed any loss on sale of non-performing assets needs to be supported with proper documentary evidence. CIT(A) found that if the assessee bank earns profit during the year, the same needs to be taxable in the current year and inasmuch as the profit and NPAs was earned during this year, the submission of the assessee that the profits on

the sale of NPAs will be adjusted against the future loss on sale of similar non-performing assets was untenable.

75. It is the submission on behalf of the assessee that since the bank had to abide by the mandate of the accounting standards, Ld. CIT(A) ought to have allowed the bank's ground of appeal in respect of the profit on sale of NPAs. In the alternative, it is pleaded that the observation of the Ld. AO that after availing the provisions of bad debt, suspended interest/derecognized interest, DICGC/ECGC claim, then at book profit of such a NPAs remained at Rs.1,25,414/- needs verification as to whether the same includes or excludes the provision.

76. We are convinced with the alternative submission on behalf of the assessee that whether the assessee was left with any tax paid versus against the NPAs or not, needs verification at the end of the AO after affording an opportunity to the assessee to put forth their case and to submit the details if any, on this aspect. For this purpose we set aside the issue and remand it to the file of the Ld. AO. This ground is, therefore, allowed for statistical purpose.

77. Grounds No. 5 and 6 are not pressed hence they stand dismissed. Grounds No. 1 and 7 in ITA 4722/Del/2012 are general in nature and do not require any adjudication. Accordingly ITA No 4722/Del/12 preferred by the assessee is allowed in part for statistical purpose and ITA No 4718/Del/12 preferred by the Revenue is dismissed.

<u>Assessment Year:2009-10</u> (ITA No.2406/Del/2013 & ITA 2966/13)

78. Ground No.2 in ITA No.2406/Del/2013 & Ground No.5 in ITA 2966/13 relate to the issue of applicability of Section 14A of the Act to the assessee's case in view of the judgement of the Hon'ble Apex Court in the case of Maxopp Investments Ltd. (Supra), as such, these two grounds are disposed of together, while other grounds are dealt with separately appeal wise

79. During the year, the assessee earned the exempt income of Rs.202,74,24,616/-. Assessee disallowed a sum of Rs.12.07 crores under Rule 8D(2)(iii) of the Rules. Learned AO added a sum of Rs.133.16 crores under Rule 8D 2)(ii). Learned CIT(A), however, deleted the addition of Rs.133 16 crores made under Rule 8D(2)(ii) but sustained the disallowance of Rs.12.07 crores under Rule 8D(2)(iii) of the Rules on the ground that the assesssee in both the original return and the revised return of income disallowed the same. Grievance of the assessee is that when the disallowance of expenditure of Rs.12.07 crores under Rule 8D(2)(iii) is not maintainable and no expenditure is attributable to the exempt income as laid down by the Hon'ble Apex court in the case of Maxopp Investment Ltd. Vs CIT (2018) 402 ITR 640(SC), the CIT(A) should not have sustained the same merely because the assessee disallowed in their return of income.

80. This issue is directly and substantially the same, which was dealt with by us at length vide Ground No.1 in ITA No.2236./Del/2011 for the Asstt. year 2007-08 in assesseee's own

case. Whereas Ground No.5 of revenue's appeal is dismissed, Ground No.2 in assessee's appeal is allowed deleting the disallowance of Rs.12.07 crores.

ITA No.2406/Del/2013:

81. Ground Nos. 1 and 4 being general in nature, need no adjudication. Ground No.3 is dismissed as it was not pressed before the learned CIT(A) also.

ITA No.2966/Del/2013:

Ground No.1:

82. This ground relates to the disallowance of loss on revaluation of investment/secu ities held under HTM category actually being the amortization of premium amounting to Rs.338,13,24,273/-, which the assessee claims to have done on the basis of RBI guid lines. This issue is substantially and directly, but for the change in the amount, is covered by Ground No.1 in ITA No.2469/Del/2011 (supra). For the reasons recorded above on this issue, we hold that the findings of the learned CIT(A) have to be upheld and accordingly this ground of Revenue is dismissed.

Ground No.2:

83. This ground relates to the disallowance of Rs.2 lacs on account of loss arising out of conversion of securities held under the AFS/HFT category into HMT category. This issue is covered by Ground No.3 of ITA No.2469/Del/2011. For the reasons recorded above on this issue, we hold that the findings of the

learned CIT(A) have to be upheld and accordingly this ground of Revenue is dismissed.

Grounds No. 3 and 4:

84. These two grounds relate to the contribution made by the assessee to the PNB Employees Pension Fund Trust. Following the discussion that was made in the earlier paragraphs relating to this issue for the assessment years 2007-08 and to that rendered 2008-09, we hold this issue in favour of the assessee and accordingly these grounds of Revenue are dismissed.

Ground No.6:

85. This relates to the disallowance of depreciation on goodwill amounting to Rs.2,58,34,887/- in respect of the goodwill of the erstwhile Nedungadi Bank Ltd., which merged with the assessee in the Assessment Year 2003-04. This issue is dealt with as Ground No.6 in ITA No 2469/Del/2011. For the reasons recorded therein, we uphold the order of the ld. CIT(A) and accordingly this ground of Revenue is dismissed.

AY 2010-11: ITA No.2469/Del/2014:

86. Ground Nos. 1 &3 being general in nature, need no adjudication.

Ground No.2:

87. Ground No.2 relates to the disallowance of expenditure u/s 14A and Rule 8D of the Income-tax Rules. During the year, the assessee earned exempt income of Rs.412,83,02,299/-. Learned

AO disallowed a sum of Rs.154,97,80,997/- under Rule 8D(2)(ii) and Rs.16,26,97,795/- under Rule 8D(2)(iii). Learned CIT(A) while following the orders of his predecessor in the earlier years sustained the addition of Rs.16,26,97,795/- under Rule 8D(2)(iii) and deleted the addition of Rs.1,54,97,80,997/- under Rule 8D(2)(ii). This issue is directly and substantially the same, which was dealt with by us at length vide Ground No.1 in ITA No.2236./Del/2011 for the Asstt. year 2007-08 in assessee's own case. We, for the reasons recorded above on this issue, allow the ground of the assessee.

88. In the result, assessee's appeals, namely, ITA Nos 4253/Del/11, 4722/Del/12 and 2406/Del/13 are allowed in part, ITA Nos.1788/Del/12, 2236/Del/11 and 2469/Del/14 are allowed, and Revenue appeals, namely IAT No. 2469/Del/11, 4718/Del/12 and 2966/Del/13 are dismissed.

Order pronounced in the Open Court on 9th January, 2019.

Sd/- sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

(K.NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 9th **January, 2019**
VJ
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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