**IN THE INCOME TAX APPELLATE TRIBUNAL, "C" BENCH, KOLKATA**

Before : **Shri Mahavir Singh, Judicial Member, and**
**Shri M. Balaganesh, Accountant Member**

**ITA No. 1916/Kol/2012** A.Y 2009-10

United Bank of India Vs. DCIT, Circle-6, Kolkata
PAN: AAACU5624P
(Appellant) (Respondent)

**ITA No. 113/Kol/2013** A.Y 2009-10

DCIT, Circle-6, Kolkata Vs. United Bank of India
(Appellant) (Respondent)

For the Appellant/Assessee: Shri Soumitra Choudhury, Advocate, ld.AR
For the Respondent/Department: None appeared

Date of Hearing: 14-12 -2015

Date of Pronouncement: 30 -12-2015

**ORDER**

**SHRI M.BALAGANESH, AM :**

These appeals of the assessee as well as the revenue arise out of the order of the Learned CIT(A)-VI, Kolkata in Appeal No. 290/CIT(A)-VI/Cir-6/2011-12/Kol dated 26.10.2012 for the Asst Year 2009-10 passed against the order of assessment framed by the Learned AO u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). Both the appeals are taken up together and disposed off by this common order for the sake of convenience.

**ITA No. 1916 / Kol/2012– Assessee's Appeal by United Bank of India**

2. The ground no. 1 raised by the assessee is general in nature and does not require any adjudication.

3. The first issue to be adjudicated in this appeal is as to whether the provisions of section 115JB of the Act are applicable to the assessee being a banking company for the Asst Year 2009-10.

3.1. The Learned AR argued that this issue is covered by the **coordinate bench decision of this tribunal in the case of UCO Bank vs DCIT in ITA No. 1768/Kol/2009 dated 27.11.2015 for the Asst Year 2002-03.** In response to this, the Learned DR fairly conceded that this issue is covered by the said decision.

3.2. We have heard the rival submissions and we find that this issue is squarely covered by the co-ordinate bench decision of this tribunal in the case of ***UCO Bank vs DCIT in ITA No. 1768/Kol/2009 dated 27.11.2015 for the Asst Year 2002-03.*** The Tribunal while rendering this judgement duly appreciated the relevant provisions of section 211 of Companies Act, 1956, Insertion of Explanation 3 to section 115JB of the IT Act, 1961, with effect from 1.4.2013 , relevant provisions of section 2(5) of the Companies Act, 1956, definition of 'company' under Banking Regulation Act, 1949, definition of 'company' under Companies Act, 1956, Notes to Clauses to Finance Act, 2012 on the subject of Minimum Alternate Tax (MAT) while introducing Explanation 3 to section 115JB of the IT Act, 1961, intention behind introduction of MAT provisions, Circular No. 762 dated 18.2.1998 on the subject of MAT, the Memorandum explaining the provisions in the Finance (No.2 ) Bill, 1996 on the subject of MAT and relevant rules of legal interpretation. The tribunal also placed reliance on the following decisions:-

**** Surana Steels P Ltd vs DCIT reported in (1999) 237 ITR 777 (SC)***
**** State Bank of Hyderabad vs DCIT reported in (2013) 33 taxmann.com 312 (Hyderabad – Tribunal) vide order dated 7.9.2012***
****Maharashtra State Electricity Board vs JCIT reported in (2002) 82 ITD 422 (Mumbai Tribunal) vide order dated 6.8.2001***

***Kerala State Electricity Board vs DCIT reported in (2010) 329 ITR 91 (Ker)***

**** Indian Bank vs Addl CIT in ITA No. 469 / Mds / 2010 dated 3.8.2011 for Asst Year 2000-01***

**** Kurung Thai Bank vs JCIT reported in (2012) 49 SOT 12 (Mumbai Tribunal)***

**** Union Bank of India vs ACIT in ITA No. 4702 to 4706 / Mum / 2010 for the Asst Years 2002-03 to 2006-07***

**** ICICI Lombard General Insurance Co Ltd vs ACIT reported in 2012-TIOL-690-ITAT-Mum in ITA No. 2398/ Mum / 2009 dated 10.10.2012 for the Asst Year 2003-04***

**** Bank of India vs Addl CIT reported in 2014 (5) TMI 929 in ITA No. 1498/Mum/ 2011 dated 9.4.2014 (Mumbai Tribunal)***

It was held by this tribunal that the provisions of section 115JB of the Act are not applicable in the case of the assessee bank and further held that the amendment brought in section 115JB of the Act read with Explanation 3 thereon by the Finance Act 2012 is applicable only with effect from Asst Year 2013-14 onwards in line with the Notes to Clauses of Finance Act 2012 .

3.3. Respectfully following the co-ordinate bench decision of this tribunal in the case of UCO Bank (supra), we also hold accordingly. Hence the ground no. 2 raised by the assessee in this regard is allowed.

4. The next ground to be decided in this issue is that whether in the facts and circumstances of the case, disallowance u/s 40(a)(ia) of the Act could be made in the sum of Rs. 15,16,519/-.

4.1. The brief facts of this issue is that the assessee bank claimed deduction of Rs. 15,16,519/- towards expenditure on payment of TDS during Asst Year 2009-10. The assessee stated that the said sum was disallowed in Asst Year 2008-09 for non-deduction of tax at source. However, the Learned AO observed that no proof for the

remittance of TDS was produced by the assessee and accordingly did not entertain the claim of deduction u/s 40(a)(ia) of the Act which was also upheld by the Learned CIT(A). Aggrieved, the assessee is in appeal before us on the following ground:-

> *"3. For that on the facts of the case, ld.CIT(Appeals) was wrong in not considering the fact and confirming previous year's expenditure amounting to Rs.15,16,519.00, although the T.D.S on the said expenditure was duly deposited in the present financial year, moreover in the assessment year 2008-09 the said expenditure was disallowed u/s. 40(a)(ia) on non-deposit of TDS, therefore, the C.I.T(A) was wrong in not allowing Rs.15,16,519.00 which is completely arbitrary, unjustified and illegal."*

4.2. The Learned AR prayed that one more opportunity be given to the assessee for proving the fact of remittance of TDS before the Learned AO during the Asst year 2009-10. In response to this, the Learned DR vehemently supported the orders of the lower authorities.

4.3. We have heard the rival submissions and in the facts and circumstances of this case, we deem it fit and appropriate , in the interest of justice and fair play, to set aside this issue to the file of the Learned AO , to decide this issue afresh in accordance with law. The assessee is directed to produce evidence of remittance of TDS on the subject mentioned expenditure to the satisfaction of the Learned AO. Accordingly, the ground no. 3 raised by the assessee is allowed for statistical purposes.

5. The next issue to be decided in this appeal is whether disallowance u/s 14A of the Act to the tune of Rs. 1,21,00,000/- could be added to the book profits u/s 115JB of the Act. The assessee has raised the following ground in this regard:-

> *"4. For that on the facts of the case, the ld.CIT(Appeals) was wrong in disallowing u/s. 14A Rs.1,21,00,000/- as notional expenditure u/s. 115JB which is completely arbitrary, unjustified and illegal."*

5.1. We have heard the rival submissions and we have already held in ground no.2 hereinabove, that the provisions of section 115JB of the Act per se would not be applicable to the assessee bank for the Asst Year 2009-10 and hence there is no question of making any addition to the book profits u/s 115JB towards disallowance u/s 14A of the Act. Accordingly, the ground no. 4 raised by the assessee is allowed.

6. The other ground is with regard to charging of interest u/s 234 B and 234 D of the Act which is only consequential in nature and does not require any adjudication.

**7. In the result, the appeal of the assessee in ITA No. 1916/Kol/2012 for the Asst Year 2009-10 is partly allowed.**

**ITA No. 113 / Kol/2013– Departmental Appeal for A.Y 2009-10**

8. The first issue to be decided in this appeal is with regard to adoption of municipal value of property for the purpose of assessing rental income from property.

8.1. The brief facts of this issue is that the assessee bank disclosed rental income from property let out and declared loss from house property to the extent of Rs. 54,502/- . The assessee submitted the details of municipal valuation of the subject mentioned properties at Rs. 13,84,554/- and stated that the higher of the municipal valuation or actual rent should be adopted as income from house property. The Learned AO during the course of assessment proceedings substituted the same by adopting the annual value of the property based on average rental rates available in the website www.magicbricks.com. Accordingly the Learned AO arrived at the rental figure of Rs. 2,61,58,020/- and income from house property was computed accordingly by giving deduction towards municipal taxes paid and standard deduction @ 30% on the balance. On first appeal, the Learned CITA accepted the contentions of the assessee and accordingly directed the Learned AO to adopt the municipal

valuation for assessment of rental income from subject mentioned properties. Aggrieved, the revenue is in appeal before us on the following ground:-

> *"1. Whether on the facts and circumstances of the case, ld.CIT(A) erred in law in holding that municipal valuation for rent is accepted to be appropriate reasonable and reliable as evidence. "*

8.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR argued that the subject mentioned properties are old properties and are let out to different tenants for the last 30 years. In all the earlier assessment years, the income declared by the assessee bank from the subject mentioned properties were accepted by the department and assessments completed u/s 143(3) of the Act. He argued that the assessee had offered the municipal valuation of properties which is higher than the actual rent received by the assessee. He argued that in any case, no addition towards rental income could be made by the Learned AO by adopting the average rental figures taken from the website.

8.3. We have heard the rival submissions and perused the materials available on record. We find that the Learned CITA had correctly adopted the municipal valuation for determination of rental income from subject mentioned properties. We also find that the municipal valuation is higher than the actual rent received in the instant case. For the sake of convenience, let us get into the provisions of section 23 which is reproduced below:-

> *Section 23 – Annual value how determined*
>
> ***Annual value how determined.***
>
> ***23.*** *(1) For the purposes of section 22, the annual value of any property shall be deemed to be—*
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> *(a) the sum for which the property might reasonably be expected to let from year to year; or*
>
> *(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or*

*(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable :*

The computation of annual value in accordance with the provisions of section 23 of the Act could be better understood in the following manner:-

| | | |
|---|---|---|
| A | = | Actual rent received – Rs. 15,062/- |
| B | = | Fair Rent - Rs. 2,61,58,020/- |
| C | = | Standard Rent – Not Applicable and hence Rs Nil |
| D | = | Municipal value - Rs. 20,44,361/- |

Annual Value (Z) = Higher of B or D = 2,61,58,020/-
Expected Rent (Y) = Lower of Z or C = Nil
Gross Annual Value = Higher of Y or A = 15,062/-

In the instant case, the Learned CIT(A) had adopted the municipal value of Rs. 20,44,361/- as the gross annual value and proceeded to compute the taxable income from house property on that basis. Against this , the assessee is not in appeal before us. Hence we find that the revenue should not be aggrieved at all in the instant case. In any case, the figures obtained from the website www.magicbricks.com cannot be treated as a reliable evidence. Hence we find no infirmity in the order of the Learned CITA. Accordingly, the ground no.1 raised by the revenue is dismissed.

8. The next issue to be decided in this appeal is as to whether the expenditure incurred towards debit cards to the tune of Rs. 69,23,167/- be treated as revenue expenditure in the facts and circumstances of the case.

8.1. The brief facts of this issue is that the assessee incurred a sum of Rs. 69,23,167/- towards issuance of debit cards to its customers which are valid for a period of 5 years. The Learned AO observed that since the cards are valid for 5 years, the same are to be treated as capital expenditure and accordingly disallowed the same in the assessment.

On first appeal, the Learned CIT(A) deleted the addition. Aggrieved, the revenue is in appeal before us on the following ground:-

> *"2. Whether on the facts and circumstances of the case, ld.CIT(A) erred in law in holding that the expenditure on ATM cum debit card be treated as revenue expenditure. "*

8.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR argued that the incurrence of the expenditure towards issuance of debit cards neither results in any capital asset nor any enduring benefit to the assessee in the capital field. These debit cards are issued free of cost to the customers of the assessee bank. He further argued that the same has been allowed as a normal business expenditure by the department in the earlier years under scrutiny assessment proceedings.

8.3. We have heard the rival submissions and we find that the issuance of ATM cum Debit Cards to the customers of the assessee bank is part of the business activity of the assessee and there is no enduring benefit to the assessee out of incurring this expenditure. The Learned CIT(A) had observed that in the past the department had been accepting this expenditure as a revenue expenditure and we find no change in facts and circumstances of the case for the year under appeal with regard to the impugned issue warranting the department to take a different stand. This fact has not been controverted by the revenue before us. Though the principle of res judicata does not apply to income tax proceedings, in our opinion the principle of consistency cannot be given a go bye. Reliance in this regard is placed on the decision of the ***Hon'ble Apex Court in the case of Radhasaomi Satsang reported in 193 ITR 321(SC) .*** Hence we find no infirmity in the order of the Learned CIT(A). Accordingly, the ground no. 2 raised by the revenue is dismissed.

9. The next ground to be decided in this appeal is as to whether disallowance u/s 40(a)(ia) of the Act could be made for violation of provisions of section 194A of the Act in respect of interest on matured deposits to the tune of Rs. 21,66,00,000/-.

9.1. The brief facts of this issue is that the Learned AO during the course of assessment proceedings observed that the assessee had provided for interest on matured term deposits to the tune of Rs. 21,66,00,000/- without deduction of tax at source. According to the assessee, the said interest does not fall under the ambit of section 194A of the Act as the term deposits on maturity becomes payable to the customer on demand and hence it gets converted into a demand deposit and attracts interest only at savings bank interest rate as per RBI guidelines. The assessee argued that admittedly, the provisions of section 194A of the Act are applicable only in respect of interest on term deposits and not in respect of demand deposits. The Learned AO did not agree with this proposition and sought to disallow the interest on matured term deposits to the tune of Rs. 21,66,00,000/- for violation of TDS provisions and made disallowance u/s 40(a)(ia) of the Act. On first appeal, the Learned CIT(A) appreciated the contentions of the assessee and deleted the disallowance. Aggrieved, the revenue is in appeal before us on the following ground:-

> *"3. Whether on the facts and circumstances of the case, ld.CIT(A) erred in law in holding that provisions of Sec 194A rws 40(a)(ia) is not applicable on payment of interest on matured term deposits."*

9.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR reiterated the arguments advanced by the assessee before the Learned AO. In addition to that, he argued that no disallowance on this account was made by the department in the earlier years. In support of this contention, he placed the copy of the Learned CIT(A) order for the Asst Year 2007-08.

9.3. We have heard the rival submissions and find that the provisions of section 194A(3)(vii) of the Act makes it clear that the provisions of sub-section (1) of section 194A shall not apply to -

> *"such income credited or paid in respect of deposits (other than time deposits made on or after 1.7.1995) with a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act)."*

9.3.1. Hence it is very clear that the provisions of section 194A of the Act does not apply to deposits other than time deposits on or after 1.7.1995. Now the short point that arises for our consideration is as to what would be the nature of deposit in respect of matured term deposits . In this regard, it would be pertinent to look into the relevant guidelines issued by RBI which are as below:-

Master Circular on Cash Reserve Ratio (CRR) and Statutory Liquid Ratio (SLR) vide reference in DBOD.No. Ret.BC.22/12.01.001/2012-13 dated 2.7.2012

> **1.5. Demand Liabilities**
>
> *Demand liabilities of a bank are liabilities which are payable on demand. These include current deposits, demand liabilities portion of savings bank deposits, margins held against letters of credit / guarantees, balances in overdue fixed deposits, cash certificates and cumulative / recurring deposits, outstanding Telegraphic Transfers (TTs), Mail Transfers (MTs), Demand Drafts (DDs), unclaimed deposits, credit balances in the Cash Credit account and deposits held as security for advances which are payable on demand. Money at call and Short Notice from outside the Banking System should be shown against liability to others.*

9.3.2. From the above meaning as clarified in RBI guidelines, it could be safely inferred that the once a term deposit gets matured, if the customer does not approach the bank for either withdrawing or renewing the matured term deposit, the bank cannot suffer interest applicable to the term deposits for the faults committed by the customer

/ depositor. Instead the banks are instructed by RBI to pay interest at the rate applicable to savings bank deposits which is much less as compared to the term deposit interest rate. Moreover, the term deposits on maturity becomes repayable by the assessee on demand and gets automatically converted into a demand deposit. The provisions of section 194A (3)(vii) are very clear that the provisions of section 194A(1) shall not apply to demand deposits and hence the assessee bank is not liable to deduct tax at source on interest provided on those demand deposits. Hence in these circumstances, we find that the Learned CITA had rightly granted relief to the assessee bank in this regard. Accordingly, the ground no. 3 raised by the revenue is dismissed.

10. The last issue to be decided in this appeal is as to whether disallowance u/s 14A of the Act read with Rule 8D(2)(ii) of the Rules could be made applicable to the assessee bank in the facts and circumstances of the case.

10.1. The brief facts of this issue is that the assessee bank was in receipt of exempted dividend income of Rs. 3,54,45,760/-. The Learned AO invoked the provisions of section 14A of the Act read with Rule 8D(2)(ii) and (iii) of the Rules and made disallowance of Rs. 13,10,65,100/- and Rs. 1,21,01,500/- respectively. On first appeal, the Learned CIT(A) held that the assessee has got sufficient own funds to the extent of Rs. 4532.27 crores as on 31.3.2009 to make investment of Rs. 242.03 crores and hence no part of borrowed funds were utilized for making investments. Accordingly, the provisions of Rule 8D(2)(ii) cannot be made applicable and deleted the disallowance u/s 14A to the tune of Rs. 13,10,65,100/-. However, he upheld the disallowance under Rule 8D(2)(iii) of the Rules @ 0.5% of investments amounting to Rs. 1,21,01,500/-. Aggrieved, the revenue is in appeal before us on the following ground:-

> *"4. Whether on the facts and circumstances of the case, ld.CIT(A) erred in law in holding that Section 14A Rule 8D is not applicable in respect of interest expenses made by the assessee."*

10.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR vehemently relied on the order of the Learned CIT(A).

10.3. We have heard the rival submissions and find that the assessee bank has got sufficient own funds to the extent of Rs. 4532.27 crores as on 31.3.2009 which is very much available for making investment of Rs. 242.03 crores and hence it can safely be presumed that no part of borrowed funds were utilized for making investments yielding tax free income. Moreover, the Learned AO had not brought on record any nexus between borrowed funds and amount invested by assessee. There are plethora of judgements in favour of the assessee on the impugned issue. Hence the addition deleted by the Learned CIT(A) in respect of Rs. 13,10,65,100/- by invoking Rule 8D(2)(ii) of the Rules does not require any interference. Accordingly, the ground no. 4 raised by the revenue is dismissed.

11. In the result, the appeal of the revenue in ITA No. 113/Kol/2013 is dismissed.

**12. To sum up, the appeal of the assessee in ITA No. 1916/Kol/2012 for the Asst Year 2009-10 is partly allowed and appeal of the revenue in ITA No. 113/Kol/2013 is dismissed.**

Order pronounced on 30 .12.2015

Sd/-
(M. Balaganesh, Accountant Member)

Sd/-
( Mahavir Singh, Judicial Member )

Date 30 /12/2015

Copy of the order forwarded to:

1. The Appellant: United Bank of India 16 Old Court House St., Kol-1

2 The Respondent-DCIT,Cir-6 Aaykar Bhavan, P-7 Chowringhee Sq, Kol-69.

3 /The CIT, 4.The CIT(A)

5. DR, Kolkata Bench

6. Guard file.

True Copy, By order, Asstt Registrar

****PRADIP/SPS**