

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "A" KOLKATA**

Before **Shri N.V.Vasudevan, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

<b>ITA No.585 &amp; 911/Kol/2013</b> Assessment Year :2009-10
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UCO Bank C/o UCO Bank, 10, B.T.M. Sarani, Kolkata-700 001 <b>[PAN No.AAACU 3561 B]</b>	<b>V/s.</b>	DCIT, Circle-6, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700 069
DCIT, Circle-6, Room No. 17, 6 <sup>th</sup> Floor, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700 069	<b>V/s.</b>	M/s UCO Bank 10, BTM Sarani, Kolkata-700 001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri D.S.Damle, FCA
राजस्व की ओर से/By Respondent	Shri Rajat Subhra Biswas, CIT-DR
सुनवाई की तारीख/Date of Hearing	13-05-2016
घोषणा की तारीख/Date of Pronouncement	05-07-2016

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

These cross-appeals by assessee and Revenue are against the common order of Commissioner of Income Tax (Appeals)-VI, Kolkata in appeal No.299/CIT(A)-VI/Circle-6/Kol/2011-12 Dated 24.01.2013. Assessment was framed by DCIT, Circle-6 Kolkata u/s 143(3) of the Income Tax Act, 1961

(hereinafter referred to as 'the Act') vide his orders dated 29.12.2011 for assessment year 2009-10.

Shri D.S. Damle, Ld. Authorized Representative appeared on behalf of assessee and Shri Rajat Subhra Biswas, Ld. Departmental Representative appeared on behalf of Revenue.

2. Both the appeal are heard together and are being disposed of by way of this consolidate order for the sake of convenience.

First we take up assessee's appeal in **ITA No.585/Kol/2013** for AY 09-10. The grounds raised by the assessee per its appeal are as under:-

*"1. For that on the facts and in the circumstances of the case, the CIT(Appeals) was grossly unjustified in upholding the disallowance for provision for bad & doubtful debts amounting to Rs.320,17,00,000/- on the ground that the deduction under Section 36(1)(viia) needs to be restricted to actual provision made in the books.*

*2. For that on the facts and in the circumstances of the case, the CIT(Appeals) was grossly unjustified in law and on facts in upholding disallowance of Rs.2,36,68,517/- by invoking Rule 8D(2)(iii) of the IT Rules without establishing any proximate cause between the expenditure incurred and earning of tax free income.*

*3. For that on the facts and in the circumstances of the case, the CIT(Appeals) grossly erred in considering the shares & securities held as '**stock-in-trade**' to be '**investment**' for the purposes of computing disallowance under Sec. 14A read with Rule 8D(2)(iii).*

*4. For that on the facts and circumstances of the case, the disallowance made u/s. 14A be deleted and/or reduced.*

*5. For that on the facts and in the circumstances of the case, the CIT(Appeals) was grossly unjustified in disallowing provision for leave encashment amounting to Rs.27,13,00,000/- under Section 43B of the IT Act, 1961.*

*6. For that on the facts and in the circumstances of the case, the CIT(Appeals) erred in law and on facts in upholding the assessment of total income u/s. 115JB of the Act even though provisions of Sec 115JB*

had no application to the appellant which is not a “**company**” established under the Companies Act, 1956.

7. For that on the facts and in the circumstances of the case, the CIT(Appeals) failed to consider that the newly inserted Explanation 3 to Section 115JB did not apply to the appellant since the appellant is not a “**company**” contemplated by the provision to Section 212 of the Companies Act, 1956.

8. For that on the facts and in the circumstances of the case, the CIT(Appeals) failed to appreciate that Explanation 3 to Section 115JB was inserted by the Finance Act, 2012 and was applicable from A.Y 2013-14 onwards; therefore the provisions of Section 115JB was not applicable to the year under consideration.

9. For that on the fact and circumstances of the case and without prejudice to Ground No. 6, 7 & 8 the Id. CIT(Appeals) failed to appreciate that in computing book profit there was no enabling provision for making adjustment in respect of expenditure disallowed as per Rule 8D(2)(iii) and therefore the CIT(Appeals) was grossly unjustified in increasing the book profit by the sum of Rs.2,36,517/-.

10. For that on the fact and circumstances of the case and without prejudice to Ground No. 6, 7 & 8 the Id. CIT(Appeals) was grossly unjustified in adding back the provision for bad and doubtful debts, provision for standard assets, provision for credit linked notes, provision for unstructured loans and provision for other assets considering the said provisions were made towards diminution in value of assets.

11. For that on the fact and circumstances of the case and without prejudice to Ground No. 6, 7 & 8, the Id. CIT(Appeals) failed to appreciate that the provision for bad and doubtful debts & provision for standard assets were reduced from the gross figure of debtors/loans & advances and the net figure was reflected in the Balance Sheet and therefore in light of the decision of the Supreme Court in the case of Vijaya Bank, it amounted to actual write off and were not in the nature of provisions.

12. For that on the fact and circumstances of the case and without prejudice to Ground No. 6, 7 & 8, Id. CIT(Appeals) failed to consider that the provision for credit linked notes, provision for unstructured loans were in the nature of provision for losses created in the ordinary course of banking business and not provisions made towards diminution in value of assets.

*13. For that on the facts and circumstances of the case, the AO be directed to re-compute the set off and carry forward of the unabsorbed business losses and depreciation brought forward from the earlier years.*

*14. For that on the facts and circumstances of the case, the interest levied u/s. 234B & 234D serves to be deleted and/or reduced.*

*15. For that the appellant reserves the right to add to, alter or amplify the above grounds of appeal.”*

3. First issue raised by assessee in this appeal in Ground No.1 is that Ld. CIT(A) erred in confirming the action of Assessing Officer by disallowing the provision of bad and doubtful debts amounting to ₹320,17,00,000/- on account of provision of Sec. 36(1)(viiia) of the Act.

The facts in brief are that assessee in the present case is a Public Sector Bank. During the year assessee has created the provision of ₹268.40 crores u/s. 36(1)(viiia) of the Act by debiting in its profit and loss a/c. However, assessee in its computation of income claimed the deduction u/s. 36(1)(viiia) of the Act for ₹ 588.57 crores. The AO disallowed the deduction as claimed by assessee over and above the provision created in assessee's books of account and added to the total income of the assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who upheld the action of AO.

Being aggrieved, by this order of Ld. CIT(A) assessee came in second appeal before us.

5. The Id. AR of the assessee fairly acceded that the issue is already covered in favour of Revenue. The relevant extract of the case STATE BANK OF PATIALA vs. COMMISSIONER OF INCOME TAX & ANR whereby Hon'ble HIGH COURT OF PUNJAB & HARYANA (2005) 198 CTR 0407 :

(2005) 272 ITR 0054 : (2005) 143 TAXMAN 0196 held as under :

*"Making of a provision for bad and doubtful debts equal to the amount mentioned in s. 36(1)(viiia) is a must for claiming such deduction. In the present case, the assessee has not made any provision in the books of account for the assessment year under consideration, i.e., 1985-86. By making supplementary entries and by revising its balance sheet, the provision has been made in the books of account of the subsequent year. The Tribunal was right in holding that since the assessee had made a provision of Rs. 1,19,36,000 for bad and doubtful debts, its claim for deduction under s. 36(1)(viiia) had to be restricted to that amount only. Since the language of the statute is clear and is not capable of any other interpretation, no substantial question of law arises in the appeal for consideration by the Court.*

*Assessee claiming deduction for bad debt under unamended s. 36(1)(viiia) but after amendment enhancing the deduction in the return by making up the shortfall in the provision in the balance sheet of subsequent year, the claim to the extent of enhancement is not allowable."*

Respectfully following the above cited case law, we find no reason to interfere in the order of lower authorities. Hence the ground raised by assessee is dismissed.

6. Next issue raised by assessee in Grounds No. 2, 3 & 4 is that Ld. CIT(A) erred in confirming the action of AO by upholding the disallowance of ₹2,36,68,517/- by invoking the Rule 8D(2)(iii) the Rule.

7. During the year, assessee has declared tax free income of ₹ 5,08,78,809/- but no expenditure pertaining to tax free income was disallowed in the computation of total income of assessee. Accordingly, AO sought clarification from the assessee for not making the disallowance u/s. 14A of the Act. In compliance thereto it was submitted that the assessee was dealing in shares and the income earned thereon is offered to tax. The dividend income which is exempted from tax is incidental to the main business of assessee. However, AO has disregarded the contention of assessee by holding that merely because the assessee is dealing in shares it cannot be said that no

expenditure has been incurred in relation to earn of tax free income and accordingly AO has made disallowance u/s. 14A of the Act for an amount of ₹ 32,80,34,625/- and added to the total income of assessee.

8. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who partly allowed the appeal of assessee by observing as under:-

*"17. I have considered the observations of the Assessing Officer in the assessment order and submissions of the appellant. In respect of the aforesaid ground of appeal the appellant has also submitted that in the Assessment Year 2007-08 the Assessing Officer had disallowed administrative expenditure at the rate of 0.5% of the average value of investments under Section 14A of the IT Act, 1961 in terms of Rule 8D(2)(iii) and no appeal was filed by the appellant against the aforesaid disallowance in AY 2007-08. The CIT(A)-VI, Kolkata had also disallowed administrative expenditure at the rate of 0.5% of the average value of investments under Section 14A of the IT Act, 1961 in terms of Rule 8D(2)(iii) in Assessment Year 2008-09 and no appeal was filed by the appellant against the aforesaid disallowance the appellant has further accepted during the appellate proceedings to disallow at the rate of 0.5% of the average value of investment under Section 14A of the IT Act during these appellate proceedings for Assessment Year 2009-10.*

*18. Therefore, following the reasoning given in the appellate order by the Ld. CIT(A)-VI, Kolkata in A.Y 2009-10, the amount of R.2,36,68,517/- is hereby disallowed in normal computation of income as well as u/s. 115JB. The appellant get part relief of Rs. 30,43,66,108/. These Grounds are partly allowed."*

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us against partly disallowance.

9. At the outset, it was observed that the present issue is squarely covered in favour of assessee and against the Revenue by the decision of this co-ordinate Bench of this Tribunal in the case of *Gulshan Investment Ltd* 31 taxmann.com 113 (Kol); *DCIT vs. Kredent Brokerage Services Ltd.* in ITA No. 806/Kol/2012 and in the case of *DCIT vs. Baljit Securities Pvt. Ltd.* in ITA No.1183/Kol/2012 and also the judgment of Hon'ble Karnataka High Court in the case of *CCI Ltd. vs. CIT* 250 CTR 291 (Kar);

In the instant case since the assessee is a dealer in share, therefore the rigorous provision u/s 14A r.w.s 8D of the IT Rule shall not be applied with respect to share held by way of stock-in-trade. In this connection, whether assessee is a dealer in share or not we are placing our reliance in the case of 240 ITR 355 respectfully where it has been held that the assessee is dealer in shares. The relevant extract of the case UNITED COMMERCIAL BANK vs. COMMISSIONER OF INCOME TAX (1999) 156 CTR 0380 : (1999) 240 ITR 0355 (1999) 106 TAXMAN 0601 whereby Hon'ble SUPREME COURT OF INDIA held as under :

*"It is an established rule of commercial practice and accountancy that closing stock can be valued at cost or market price whichever is lower. What is taxable under the Act is the really accrued or arisen income. On the basis of the method of accountancy regularly employed by the assessee, the real income is pointed out in the IT return submitted by the assessee. This cannot be ignored by holding that in a balance sheet which is required to be statutorily maintained in a particular form, market value of the shares and securities is not mentioned or is mentioned in brackets. Hence, for the purpose of income-tax whichever method is adopted by the assessee a true picture of the profits and gains, that is to say, the real income is to be disclosed. For determining the real income, the entries in a balance sheet required to be maintained in the statutory form, may not be decisive or conclusive. In such cases, it is open to the ITO as well as the assessee to point out the true and proper income while submitting the IT return. In the present case, Central Government, in exercise of the powers conferred by s. 53 of the Banking Regulation Act, and on the recommendation of the RBI permitted the assessee not to disclose the market value of its investment in the balance sheet required to be maintained as per the statutory form. But as the assessee was maintaining its accounts on mercantile system, he was entitled to show his real income by taking into account market value of such investments in arriving at real taxable income. On that basis, therefore, AO has taxed the assessee. It can now be held : (1) That for valuing the closing stock, it is open to the assessee to value it at the cost or market value, whichever is lower; (2) In the balance sheet, if the securities and shares are valued at cost but from that no firm conclusion can be drawn. A taxpayer is free to employ for the purpose of his trade, his own method of keeping accounts, and for that purpose, to value stock-in-trade either at cost or market price; (3) A method of accounting adopted by the taxpayer consistently and regularly cannot be discarded by the Departmental authorities on the view that he should have adopted a different method of keeping accounts or of valuation; (4) The concept of real income is certainly applicable in judging whether there has been income or not, but in every case, it must be applied with care and within their recognised limits; (5) Whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation; (6) Under s. 145 in a case where accounts are correct and complete but the method employed is such that in the opinion of the ITO, the income cannot be properly deduced therefrom, the computation shall be made in such manner and on such basis as the ITO may determine. Consistently for 30 years, the assessee was valuing the stock-in-trade at cost for the purpose of statutory balance sheet, and for the IT return, valuation was at cost or market value, whichever was lower. That practice was accepted by the Department and there was no justifiable*

*reason for not accepting the same. Preparation of the balance sheet in accordance with the statutory provision would not disentitle the assessee in submitting IT return on the real taxable income in accordance with a method of accounting adopted by the assessee consistently and regularly. That cannot be discarded by the Departmental authorities on the ground that assessee was maintaining balance sheet in the statutory form on the basis of the cost of the investments. In such cases, there is no question of following two different methods for valuing its stocks-in-trade (investments) because the bank was required to prepare balance sheet in the prescribed form and it had no option to change it. For the purpose of income-tax as stated earlier, what is to be taxed is the real income which is to be deduced on the basis of the accounting system regularly maintained by the assessee and that was done by the assessee in the present case. Where the assessee-bank had been valuing its stock-in-trade (investments) "at cost" in the balance sheet but it had been valuing the same investments "at cost or market value, whichever is lower", for income-tax purposes for over 30 years, the same could not be discarded by the Revenue on the ground that assessee was maintaining balance sheet in the statutory form on the basis of the cost of the investments.*

*For valuing the closing stock, it is open to the assessee to value it at the cost or market value, whichever is lower; a method of accounting adopted by the taxpayer consistently and regularly cannot be discarded by the Departmental authorities on the view that he should have adopted a different method of keeping accounts or of valuation."*

The various courts have held that no disallowance under section 14A of the Act can be made with respect to shares held by way of stock in trade. We are putting our reliance in the case of CCI LTD. vs. JOINT COMMISSIONER OF INCOME TAX (2012) 250 CTR 0291 (Kar) : (2012) 71 DTR 0141 (Karn) : (2012) 206 TAXMAN 563 (Karnataka) where Hon'ble HIGH COURT OF KARNATAKA held as under :

*"When no expenditure is incurred by the assessee in earning the dividend income, no notional expenditure could be deducted from the said income. It is not the case of the assessee retaining any shares so as to have the benefit of dividend. 63% of the shares, which were purchased, are sold and the income derived therefrom is offered to tax as business income. The remaining 37% of the shares are retained. It has remained unsold with the assessee. It is those unsold shares have yielded dividend, for which, the assessee has not incurred any expenditure at all. Though the dividend income is exempted from payment of tax, if any expenditure is incurred in earning the said income, the said expenditure also cannot be deducted. But in this case, when the assessee has not retained shares with the intention of earning dividend income and the dividend income is incidental to his business of sale of shares, which remained unsold by the assessee, it cannot be said that the expenditure incurred in acquiring the shares has to be apportioned to the extent of dividend income and that should be disallowed from deductions. In that view of the matter, the approach of the authorities is not in conformity with the statutory provisions contained under the Act. Therefore, the impugned orders are not sustainable and require to be set aside. **Accordingly**, the substantial question of law is answered in favour of the assessee and against the revenue. Merely because the assessee is also having dividend income, the provisions of s 14A of the Act are not applicable to the expenses incurred by the assessee in the course of its business when there was no material brought to show that the assessee had incurred expenditure for earning dividend income which is exempted from taxation."*



Respectfully following the above cited case laws for holding the bank as dealer in shares/ securities and consequently no disallowance is warranted on the shares/securities held as stock in trade. Accordingly we reverse the orders of Authorities Below and allow the ground raised by assessee. AO is directed accordingly.

10. Next issue raised by assessee in ground No.5 is that Ld. CIT(A) erred in confirming the action of AO for disallowing the provision of leave encashment amounting to Rs.27. 13 crores u/s. 43B of the Act.

Ld. Counsel for the assessee argued for provision for leave encashment that this issue is pending before Hon'ble Supreme Court in the case of Exide Industries Ltd. Vs. Union of India (2007) 292 ITR 470 (Cal) and fairly conceded that subsequently Hon'ble Supreme Court has stayed this judgment of Hon'ble jurisdictional High Court vide order 08-05-2009 by following observations:-

*“Pending hearing and final disposal of the Civil Appeals, Department is restrained from recovering penalty and interest which has accrued till date. It is made clear that as far as the outstanding interest demand as of date is concerned, it would be open to the Department to recover that amount in case Civil Appeal of the Department is allowed.*

*We further make it clear that the assessee would, during the pendency of this Civil Appeal, pay tax as if section 43B(f) is on the Statue Book but at the same time it would be entitled to make a claim in its returns.”*

In view of the above, Ld. counsel for the assessee fairly stated that let Hon'ble Supreme Court decide the issue and by that time the matter can be remitted back to the file of AO for fresh adjudication in term of the decision of Hon'ble Supreme Court. On this, Ld. CIT DR has not objected to the same. Accordingly, we set aside this issue to the file of the AO to await the decision of Hon'ble Supreme Court and decide the issue accordingly. This issue of assessee's appeals is remitted back to the file of AO and allowed for statistical purposes.

11. Next issue raised in Grounds No. 6 to 8 in this appeal is that Ld. CIT(A) erred in applying the provision of Sec. 115JB of the Act though these are not applicable to the assessee which is not a company established under the Companies Act, 1956.

12. At the outset, we find that issue is squarely covered in favour of assessee in its own case for AY 2002-03 in ITA No.1768/Kol/2009 dated 27.1.2015, wherein the Tribunal has decided held that :

*"7.5. In view of the above, we hold that in view of the legislative change brought about by the introduction of Explanation 3 in section 115JB of the Act by the Finance Act, 2012 , the assessee's contention in fact stands more fortified. The Explanation 3 to section 115JB makes it evidently clear that section 115JB is applicable only to entities registered and recognized to be companies under the Companies Act, 1956. Since the assessee is not a company within the meaning of Companies Act, 1956, section 211(2) and proviso thereon is not applicable and therefore consequently we hold that the provisions of section 115JB of the Act are also not applicable."*

Respectfully following the above cited case laws, we reverse the orders of Authorities Below and allow the ground raised by assessee. AO is directed accordingly.

13. Next issue raised by assessee in ground No.9 is that Ld. CIT(A) erred in confirming the action of AO by disallowance the expense disallowed as per Rule 8D(2)(iii) of the IT Rule for the purpose of Minimum Alternate Tax (MAT for short) u/s 115JB of the Act.

14. As we have already held that the provision of MAT does not apply to the assessee, therefore, the present issue does not require any adjudication.

15. Next issue raised by assessee in Grounds No.10 to 12 is that Ld. CIT(A) erred in making the addition to the book profit u/s. 115JB of the Act on account of provision credited for bad and doubtful debts etc.

As we have already held that the provisions of MAT are not applicable to the assessee, therefore, this issue does not require any adjudication.

16. Next issue raised by assessee in Ground No.13 for giving the direction to AO for re-computation of the set off and carry forward of unabsorbed business loss and depreciation brought forward from the earlier years.

In terms of above ground of assessee's appeal we direct the AO to re-compute the set off and carry forward of unabsorbed business loss and depreciation brought forward from the earlier years after giving effect to this appeal.

17. Last ground of assessee's appeal is consequential in nature and does not require any adjudication.

18. In the result, assessee's appeal is partly allowed.

**Coming to Revenue's appeal in ITA No.911/Kol/2013 for AY 09-10.**

19. At the very outset, we observe a very smallness delay in the filing of its appeal by Revenue which though stands suitably explained as per accompanying affidavit by the concerned official of the Revenue. The appeal was accordingly admitted, and the hearing proceeded with.

20. First issue raised by Revenue in Ground No.1 is as regards that Ld. CIT(A) erred in deleting the addition made by AO u/s 14A of the Act by invoking the Rule 8D(2)(ii) of the IT Rules on account of interest expenditure.

During the course of assessment proceedings, AO has applied Rule 8D of the IT Rules and disallowed the proportionate interest expense in terms of provision of Rule 8D(2)(ii) of the IT Rules. However, same was deleted by Ld. CIT(A).

21. At the outset, we observe that various courts have held that no disallowance of interest shall be warranted if shares are held as stock-in-trade. In this connection, we rely on the judgment of Hon'ble Karnataka High Court in the case of *CCI Ltd. vs. CIT* 250 CTR 291 (Kar) and the decision of Co-ordinate Bench in ITA No.806/Kol/2012 in the case of *DCIT vs. Kredent Brokerage Services Ltd.* and in ITA No.1183/Kol/2012 in the case of *DCIT vs. Baljit Securities Pvt. Ltd.* and we further observe that there will be no disallowance of interest where the own funds are in excess of stock value of investment. In this connection, we rely on the various orders of this co-ordinate Bench of this Tribunal in ITA No.113/Kol/2003 in the case of *DCIT vs. United Bank of India* and judgments of Hon'ble of Gujarat High Court in the case of *CIT vs. UTI Bank Ltd.* 32 taxmann.com 270 (Guj) and Hon'ble Bombay High Court in the case of *CIT vs. HDFC Bank Ltd.* in ITA 330 of 2012. The relevant extract of the judgment *CCI Ltd. vs. CIT* 250 CTR 291 (Kar) is as under :

*"When no expenditure is incurred by the assessee in earning the dividend income, no notional expenditure could be deducted from the said income. It is not the case of the assessee retaining any shares so as to have the benefit of dividend. 63% of the shares, which were purchased, are sold and the income derived therefrom is offered to tax as business income. The remaining 37% of the shares are retained. It has remained unsold with the assessee. It is those unsold shares have yielded dividend, for which, the assessee has not incurred any expenditure at all. Though the dividend income is exempted from payment of tax, if any expenditure is incurred in earning the said income, the said expenditure also cannot be deducted. But in this case, when the assessee has not retained shares with the intention of earning dividend income and the dividend income is incidental to his business of sale of shares, which remained unsold by the assessee, it cannot be said that the expenditure incurred in acquiring the shares has to be apportioned to the extent of dividend income and that should be disallowed from deductions. In that view of the matter, the approach of the authorities is not in conformity with the statutory provisions contained under the Act. Therefore, the impugned orders are not sustainable and require to be set aside. **Accordingly,** the substantial question of law is answered in favour of the assessee and against the revenue.*

*Merely because the assessee is also having dividend income, the provisions of s 14A of the Act are not applicable to the expenses incurred by the assessee in the course of its business when there was no material brought to show that the assessee had incurred expenditure for earning dividend income which is exempted from taxation"*

Respectfully following the decisions of Hon'ble High Courts, in our considered view, we uphold the order of Ld. CIT(A) and ground raised by Revenue is dismissed.

22. Next issue raised by Revenue in Ground No.2 is that Ld. CIT(A) erred in allowing the claim of assessee which was during the course of assessment was disallowed on the ground that no revised return was filed.

23. The relevant issue raised by the assessee is not very clear from the ground of appeal. However, at the time of hearing, Ld. DR mentioned that this issue relates to the profit earned by assessee-bank in respect of Singapore Branch. During the course of assessment proceedings, AO has included the profit in respect of Singapore Branch in the total income of assessee on the ground no details were filed by assessee.

24. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who deleted the addition by observing as under:-

*"27. The appellant has filed the claim during the assessment proceedings before the Assessing Officer. The appellant is a tax resident of India and therefore income accrued or received in India or outside India is taxable under the IT Act, 1961. It has a branch located in Singapore. The Head Office and the branch are to be treated as different entities for the purpose of taxation as per the appellant. The Article 7 of the DTAA i.e. tax treaty between India and Singapore deals with the taxability of business profits. Paragraph 1 of this Article states as follows:*

*'The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.'*

*28. The term "permanent establishment" has been defined in Article 5 of the tax treaty. Clause (c) of Paragraph 2 specifically includes "branch" within the definition of permanent establishment. The Hon'ble High*

*Court in the case of ABN AMRO Bank N.V. vs CIT has held that a branch is to be taken as a permanent establishment and if it is further read with relevant article the permanent establishment or the branch is to be treated as a separate unit. Therefore, keeping in view the provisions of Section 90 of the IT Act, 1961 and Article 7 of the Double Taxation Avoidance Agreement (DTAA) and respectfully following the decision of the Hon'ble jurisdictional High Court, it is held that between India and Singapore, the profits of the Singapore Branch is only taxable in Singapore and is not taxable in India. It is held that the profit of Rs.42,40,70,571/- is not taxable in India and is allowed as dd. These grounds are allowed."*

Being aggrieved by this order of Ld. CIT(A) Revenue is in appeal before us.

25. At the outset, it was observed that the issue is squarely covered in favour of assessee and against the Revenue by the decisions of Hon'ble Bombay High Court in the case of *CIT vs. Pruthvi Brokers & Shareholders Pvt. Ltd.* 252 CTR 151 (Bom); Hon'ble Delhi High Court in the case of *CIT vs. Jai Parabolic Springs Ltd.* 306 ITR 42 (Del) and Hon'ble jurisdictional High Court in the case of *Mayank Poddar HUF vs. CWT* 262 ITR 633 (Cal). The relevant extract of the judgment *CIT vs. Jai Parabolic Springs Ltd.* 306 ITR 42 (Del) is reproduced below :

*"The principal ground taken by the Revenue in this appeal is that if no claim for deduction of the amount was made in the return of income then deduction would not be allowed. Sec. 254 says that the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. Further, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years. There is no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arises in the matter and for the just decision of the case. Therefore, there is no infirmity in the order of the Tribunal.—National Thermal Power Co. Ltd. vs. CIT (1999) 157 CTR (SC) 249 : (1998) 229 ITR 383 (SC), Gedore Tools (P) Ltd. vs. CIT (2000) 161 CTR (Del) 472 : (1999) 238 ITR 268(Del), Jute Corporation of India Ltd. vs. CIT (1990) 88 CTR (SC) 66 : (1991) 187 ITR 688 (SC) and Madras Industrial Investment Corporation Ltd. vs. CIT (1997) 139 CTR (SC) 555 : (1997) 225 ITR 802 (SC) relied on; Goetze (India) Ltd. vs. CIT (2006) 204 CTR (SC) 182 : (2006) 284 ITR 323 (SC) distinguished.*

*Appeal (Tribunal)—Additional ground—Claim for deduction not claimed in the return—Tribunal had power to allow deduction for expenditure to assessee to which it was otherwise entitled even though no claim was made by assessee in the return.*

*Tribunal had power to allow deduction for expenditure to assessee to which it was otherwise entitled even though no claim was made by assessee in the return."*

Respectfully following the precedents of the various High Courts, the assessee is very much entitled make a legal claim without filing the revised return of income. We uphold the order of Ld. CIT(A) and this ground of Revenue's appeal is dismissed.

**25. In the result, assessee's appeal is partly allowed and that of Revenue's appeal stands dismissed.**

Order pronounced in the open court 05/07/2016

Sd/-  
(न्यायिक सदस्य)  
(N.V.Vasudevan)  
(Judicial Member)  
Kolkata,

Sd/-  
(लेखा सदस्य)  
(Waseem Ahmed)  
(Accountant Member)

\*Dkp

दिनांक:- 05/07/2016 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. आवेदक/Assessee-UCO Bank, C/o UCO Bank, 10, B.T.M. Sarani, Kolkata-700 001
2. राजस्व/Revenue-DCIT, Circle-6, Aayakar Bhavan, P-7, Chowringhee Square, Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,  
/True Copy/

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।