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

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
Ms. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No.3215/Mum/2019
(A.Y. 2010-11)

ICICI Bank Limited ICICI Bank Towers Bandra Kurla Complex Bandra (East) Mumbai – 400 051	Vs.	The ACIT, Circle 2(3)(2) Aayakar Bhavan, 5th Floor, Room No. 552/556 Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACI1195H		
Appellant	..	Respondent

ITA No.3864/Mum/2019
(A.Y. 2010-11)

The ACIT, Circle 2(3)(2) Aayakar Bhavan, 5th Floor, Room No. 552 Mumbai – 400 020	Vs.	ICICI Bank Limited ICICI Bank Towers Bandra Kurla Complex Bandra (East) Mumbai – 400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACI1195H		

Respondent	..	Appellant

Appellant by :	Aarti Visanji
Respondent by :	R.A. Dhyani & Dham Veer Singh

Date of Hearing	13.06.2022
Date of Pronouncement	22.08.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeals filed by the assessee and the revenue are directed against the order passed by the ld. CIT(A)-6 Mumbai, which in turn arises from the order passed by the A.O. u/s 143(3) r.w.s 147 of the Income Tax Act, 1961, for A.Y. 2010-11.

2. We shall first take ITA No. 3215/Mum/2019 appeal filed by the assessee. The assessee has raised the following grounds before us:

> *"1. Addition of Interest on Non performing assets (NPA) derecognized as per provisions of section 43D of the Act Rs.6,88,36,167 (Para 7, Pages 9 to 16 of the CIT(A) order)*
>
> *1.1 On the facts and circumstances of the case and law, the CIT(A) erred in confirming the disallowance of interest on NPA amounting to Rs.6,88,36,167 derecognized by the Appellant in its books of accounts on the ground that the same is not in line with the provisions of section 43D of the Act read with Rule 6EA of the Income-tax Rules, 1962.*
>
> *GENERAL*
>
> *2. The Appellant craves leave and reserves its right to vary, amend, alter and/or add to the grounds of appeal and to produce such oral and documentary evidence and file such compilation of documents as may be necessary at the time of hearing of the appeal."*

3. The fact in brief is that return of income declaring total income of Rs. 46,71,80,98,310/-. The assessee revised its return of income on 31.03.2012 declaring total income of Rs.46,46,21,35,560/-. The assessment u/s 143(3) of the Act was finalized on 12.03.2014 determining the total income at Rs.87,24,41,88,318/-. Subsequently, the case was reopened u/s 147 of the Act and noticed u/s 148 was issued on 31.03.2017. During the course of reassessment the A.O noticed that as Section 43D r.w.Rule 6EA interest is not to be offered for taxation with respect to advances which have become non-performing assets for a

period of 180 days or more, however, the assessee has recognized such interest on the non performing assets for a period of 90 days or more as per guidelines of RBI. On query the assessee explained that as per provision of Sec. 43D of the Act income by way of interest in relation to such categories of bad and doubtful debt as may be prescribed in the guidelines issued by RBI shall be chargeable to tax in the year in which it is credited by the public financial institution or schedule bank to its profit and loss account for the year or in the year in which it is actually received whichever is earlier. It is further stated that the bank on the guidelines laid down by the RBI regarding identification, classification and provisioning of non-performing assets derecognizes the interest if the accounts are over due for a period of more than 90 days. This method is consistently followed by the bank and is in line with provisions of Sec. 43D of the Act as this section also mentions the guidelines issued by RBI. The assessee has also submitted that the said accounting treatment has been accepted by the department in the preceding assessment years. However, the A.O has not agreed with the submission of the assessee and was of the view that the claim of interest made u/s 43D was excessive and required to be disallowed. The A.O observed that the provisions of Rule 6EA r.w.s 43D are very clear and the benefit of non-recognition of interest in the NPA can be granted to the assessee as per the provision of Rule 6EA r.s.s 43D only when the irregularities exceeds for a period of 6 months or more. The A.O also observed that as per guidelines of RBI non-performing assets are recognized for a default of 3 months or more, however as per the IT rules, the period of 3 months has not been recognized anywhere. The A.O has not accepted the interest derecognized by the assessee therefore made addition of Rs.6,88,36,167/- to the total income of the assessee.

4. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee. The relevant part of the decision of CIT(A) is reproduced as under:

> *"7.3 I have carefully considered the facts of the case, discussion of the AO in the assessment order, oral contentions and written submissions of the appellant and material available on record. It is the fact of the case that the appellant has not recognized the amount of interest attributable on sticky advances which remained NPA for a period of more than 90 days but less than 6 months as income for the period under consideration. The assessee in their reply had submitted before the AO that the interest on NPA which had not been offered to tax u/s 43D r.w.r.6EA is Rs.6,88,36,167/-. The AO, therefore added the amount of Rs.6,83,36,167/- being claim of interest on NPA made by the assessee. In this ground of appeal, what has been disputed by the assessee is that the guidelines of Reserve Bank of India prescribed recognition of the assets being NPA when the period of default is 90 days or more and that the provisions of section 430 of the Act which stipulates recognition of income by way of interest in relation to such categories of all bad or doubtful debts having regard to the guidelines issued by the RBI in relation to such debts The appellant mainly seeks to contend that what would prevail is RBI guidelines in relation to section 430 of the Act and not the Rule CEA of the Rules. In regard to such contention of the appellant, it is stated that the provisions of section 430 stipulates that "the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the Reserve Bank of India in relation to such debts." Therefore, what can be seen from the provisions of section 43D of the Act is that the income by way of interest has to be considered "as may be prescribed" and such stipulation has been prescribed in Rule 6EA of I.T. Rules, 1962 for the said purposes. It is to be understood that the rule may be prescribed having regard to the guidelines issued by the Reserve Bank of India and such stipulation in section 43D only warrants the authorities to prescribe the rules in view and in reference to the guidelines issued by the Reserve Bank of India. It therefore has to be understood that while the guidelines issued by the Reserve Bank of India are essential point for recognition, having regard to them and keeping a reference of the same, the rules have to be prescribed, but it would be the rules which have to be followed. Even if for any reason, rules have been prescribed by the Government having regard to the guidelines of RBI which may subsequently have changed, then too, it has to be considered and taken that the rules which are in force are such which have been prescribed having regard to such guidelines and no change in the rules having regard to the guidelines of RBI have been considered necessary. The phrase as appearing in the provisions of section 43D as may be prescribed cannot be read in any other manner and certainly cannot be ignored. The contention of the appellant that the mention in section 430 of "having regard to the guidelines issued by the RBI would warrant necessarily to follow the guidelines, superseding the prescribed rules in IT Rules, 1962 is therefore, clearly flawed. The Hon'ble Delhi High Court in the case of CIT vs. Vashisth Chay Vyapar Ltd. 330 ITR 440 have clearly mentioned the observation of Hon'ble Apex Court that in so far as the permissible deductions or exclusions under the Acts are concerned, the same are admissible only if such*

deductions/exclusions satisfy the relevant conditions stipulated there for under the Act. Further, Hon'ble Supreme Court in the case of Southern Technologies Ltd. vs. JCIT (Civil Appeal No.1337/2003 dated 11.01.2010) have observed that the prudential norms of RBI do not override the provisions of the Act. Accordingly, "exclusion of recognizable income under the Act" cannot be allowed in the absence of any specific in this regard in the Act.

7.3.1 The appellant has further contended that the income recognition should have regard to the real income theory. In this regard, it is stated that any theory of this kind cannot apply which makes the implementation of a prescribed rule in I.T. Rules, 1962 as inapplicable or redundant. The appellant has further contended that Rule 6EA cannot expand the scope of section 43D. In this regard, it is stated that Rule GEA has been prescribed so as to apply the provision of section 43D correctly. Any askewed interpretation which leads to redundancy of any rule prescribed under the law, will lead to the conclusion that such interpretation is incorrect and flawed and not the concerned rule or provision of the Act. It is also noted that section 43D was introduced by Finance Act, 1991 with a view to improve the viability of the banks, public financial institutions, and as per that section the interest on sticky loans has to be charged only in the year in which interest is actually received or charged to profit and loss account, whichever is earlier. As per that section, the category of bad and doubtful debts [sticky loans] was to be prescribed in the IT Rules having regard to the guidelines issued by the RBI in relation to such debts. In 1992, the Rule 6EA was framed wherein the norms for six months was provided In that year as per the RBI guidelines, the norms for categorizing NPA were more than 6 months la 1991, the specified period was two years. In 1994, it was 1.5 years, from 1995 till 31.03.2004, it remained 6 months. Thus, it is very clear that the norms of 6 months provided in Rule 6EA was not equal to the period provided in RBI guidelines from when the rule was framed till 2004. The section 43D provided from the norms by framing the rules in view of the RBI guidelines but does not mean that the norms were to be adopted Admittedly, the norms as per RBI guidelines have been further reduced to ninety days. But the Rule 6EA still continues with the norms of 6 months. Thus, the benefit of section 430 would be available to the assessee bank only in those cases in which interest or principal remained unpaid for the period of 6 months or more. The appellant has also placed reliance on the decision of Hon'ble Tribunal In the case of DCIT vs Royal Bank of Scotland (supra) and DCIT vs Karur Vyasa Bank (supra) In respect of such reliance placed, it is stated that in the said decisions, the Hon'ble ITAT have decided the issue in favour of the appellant but while deciding such issues, the historical background right from the year 1992 to 31 03.2004 as have been mentioned hereinabove, were not before the Hon'ble bench Therefore, it has not been considered that when the period given in the RBI guidelines were beyond 6 months given in Rule 6EA, then too whether there was any need to align the provisions of Rule 6EA to the guidelines issued by the RBI in this regard. The appellant has also contended that interest Income on the NPAs do not accrue u/s 5 of the Income-tax Act. They have also placed reliance on the decision of Hon'ble Supreme Court in the case of UCO Bank Ltd vs CIT (supra). In regard to such submission of the assessee, it is stated that the recognition of income in this case has to be deemed in view of the provisions of section 43D r.w Rule 6EA of the Rules and while doing so, the concept of real Income or the actual income or the

accrual thereof u/s.5 of the Act shall not arise. It may be mentioned that it could be a case wherein even before the period of 90 days, the loan may have become bad, still the banking company have to recognize the accrual of interest on the same at least up till the period of 90 days even as per RBI guidelines. Therefore, the contention of the assessee in respect of accrual of income and thereby the real income theory would not be relevant in view of the extant provisions of section 430 r.w.r.6EA of the Rules. In respect of the decision of Hon'ble Apex Court in the case of UCO Bank Ltd. vs. CIT (supra), it is stated that the same is not in respect of Section 43D/Rule 6EA of Rules. The assessee has also contended and justified its stand based on clause (e) of Rule 6EA. In respect of the same, it is stated that on facts the irrecoverability of debt has not been proved. Neither the facts nor surrounding circumstances resulting into difficulties in enforcing and realizing of the securities have been proven on facts. If that would have been the situation, then such debts could not be included for the purposes of (a) to (d) and resultantly should have been taken to section 36(1)(vii)/(via) of the Act. In view of the facts and circumstances of the case and discussion hereinabove, the contentions and submissions of the assessee are not found to be acceptable and are therefore, rejected. Ground No.2 of the appeal is accordingly, dismissed.

5. During the course of appellate proceedings before us the ld. counsel vehemently contended that it is mandatory for the banks to follow the guidelines issued by the RBI and further submitted that assessee bank had not recognized the interest income in respect of advance which were overdue for more than 3 months in the profit and loss account in accordance with RBI guidelines applicable to the bank. The ld. Counsel has also submitted that assessee bank has to follow system of accounting and prepare account as mandated by RBI guidelines. She has also submitted that Rules 6EA was in conformity with the RBI guidelines at the time of introduction, however, subsequent amendment in Rule 6EA has not been carried out in accordance with the revised guidelines issued by the RBI from time to time. The ld. Counsel has placed reliance on the decision of ITAT Mumbai in the case of Union Bank of India Vs. ACIT 16 taxmann.com 304, and the ITAT Kolkata in the case of Royal Bank of Scotland Vs. DCIT(IT) 2(1), ITA No. 477/Kal/2015 dated 14.10.2016 and also placed reliance on decision of

Chennai Tribunal in the case of DCIT Vs. Karur Vysya Bank (ITA 2433 & 2649/Mad/2016).

On the other hand the ld. D.R relied on the order of ld. CIT(A).

6. Heard both the sides and perused the material on record. The asesssee has recognized the amount of interest attributable on sticky advances as NPA for a period of 90 days or more as per the guidelines issued by the RBI in accordance with Sec. 43D of the Act. However, the A.O was of the view that as per Rule 6E, interest is not to be offered for taxation with respect to advances which become Non Performing Assets for a period of 180 days or more. With the assistance of ld. representative we have perused the decision of ITAT, Mumbai in the case of Union Bank of India VS. ACIT, 16 taxman.com 304 wherein on identical issue and similar facts held that bank had no option but follow the RBI guidelines to make a provision for unrealized interest on the NPA by debiting profit and loss account. In the case of DCIT Vs. Karur Vysya Bank ITA No. 2433 & 2467 of ITAT Chennai dated 29.03.2017 held that it becomes necessary to read down such rules so that it is in consonance with the RBI regulation or prudential norms for recognizing income.

In Royal Bank of Scotland Vs. DCIT vide ITA No. 477/Kal/2015 ITAT Kolkata held as under:

> *"2.6 We have heard the rival submissions and perused the materials available on record including the detailed paper book filed by the assessee. The facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. It is not in dispute before the lower authorities that the loan accounts had become sticky and doubtful of recovery. The only contention of the revenue is that section 43D of the Act read with Rule 6BA of the Rules permits accounting of interest income on receipt basis only if the loan account had become overdue for more than six months, whereas in the instant case, it is more than three months but less than six months as on 31.3.2010. The loan account becoming overdue and becoming sticky was never disputed. The next issue is whether the prudential norms of RBI for income recognition would override the*

provisions of the IT Act. This issue has been addressed by the Hon'ble Supreme Court in the case of Southern Technologies Ltd supra in the context of allowability of deduction towards 'Provision for NPA. We find that the same decision clearly stated that the interest income on NPA accounts should not be recognized on accrual basis which is in line with RBI prudential norms for income recognition. This fine distinction has been duly considered in the decision of the Hon'ble Delhi High Court in the case of CIT vs Vasisth Chay Vyapar Ltd supra. When the account becoming NPA is not disputed by the revenue, the recognition of income is to be done only on receipt basis which is in consonance with the real income theory. In these circumstances and respectfully following the decisions of Hon'ble Delhi High Court in 330 ITR 440 and various other decisions refered to supra, we hold that the interest income on NPA accounts should not be assessed on mercantile basis and the same is to be taxed only on receipt basis. Accordingly, the grounds raised by the assessee are allowed."

We have also perused the provision of Sect. 43D of the Act which are reproduced as under:

"43D. Notwithstanding anything to the contrary contained in any other pro vision of this Act,-

(a) in the case of a public financial institution or a scheduled bank or "[a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank or] a State financial corporation or a State industrial investment corporation "[or a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company] the income by way of interest" in relation to such categories of bad or doubtful debts as may be prescribed" having regard to the guidelines issued by the Reserve Bank of India in relation to such debts,

(b) in the case of a public company, the income by way of interest" in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the National Housing Bank in relation to such debts,

shall be chargeable to tax in the previous year in which it is credited by the public financial institution or the scheduled bank or "[a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank or] the State financial corporation or the State industrial investment corporation or "[a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company or] the public company to its profit and loss account for that year or as the case may be, in which it is actually received by that institution or bank or corporation or company, whichever is earlier."

It is categorically provided in the provisions of section 43D that income by way of interest in relation to bad and doubtful debts to be prescribed in accordance with guidelines issued by the RBI. The section 43D was introduced by the Finance Act, 1991 as per the section the category of bad and doubtful debts to be prescribed in the Income Tax Rules having regard to the guidelines issued by the RBI in relation to such debts. In 1992 the Rules 6E was framed and as per RBI guidelines the norms for categorization of advances as NPA were those advances which remained over due for more than 6 months. The RBI has revised the guideline from time to time and made changes in the period of overdue of advances for categorization of NPA. During the year under consideration the RBI has reduced the period to 90 days for categorization of interest on sticky loan as NPA, however, similar changes was not made to Rule 6EA. After considering the provisions of Sec. 43D and judicial findings as supra we consider that norms for categorization of bad and doubtful debts had to be prescribed considering the guidelines issued by the RBI. Therefore, the ld. CIT(A) is not justified in substituting the limit for recognizing of interest on account of NPA to 180 days from 90 days in view of the clear provisions of Sec. 43D(a) that in the case of public financial institutions or schedule bank or a state financial corporation or a State Industrial Investment Corporation, the income by way of interest in relation to such categories of bad and doubtful debt as may be prescribed having regard to the guidelines issued by the RBI in relation to such debts. Therefore, both the ground of appeals of the assessee are allowed.

ITA No. 3864/Mum/2019 (Revenue Appeal)

> *"1. Whether on the facts and the circumstances of the case and in laws, the Ld.CIT(A) was justified in directing the AO to dispose of the assessee's rectification application filed u/s 154 on the issue of addition of Rs.4,42,424/- on the income of the merged entity not being reported by the*

assessee, as a rectifiable mistake when the assessee has categorically failed to substantiate the income being offered to tax?

2. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of interest expenses u/s 36(1)(iii) claimed by the assessee in respect of perpetual bonds issued by it, without appreciating that the said bonds were issued to enhance the capital base of the company and considering the true nature of such instruments, and thereby corresponding interest expenditure incurred on them will not be a revenue expenditure?*

3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of interest expenses u/s 36(1)(iii) claimed by the assessee in respect of perpetual bonds issued by it, without appreciating that the RBI as the regulatory authority of banking classifies such bonds as Tier-1 capital on par with equity, free reserves, perpetual preference shares etc and thereby corresponding interest expenditure incurred on them will not be a revenue expenditure?*

4. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of interest expenses u/s 36(1)(iii) claimed by the assessee in respect of perpetual bonds issued by it without appreciating the fact that the issue of these Innovative Perpetual Debt Instruments (IPDI) do not qualify as 'borrowing' for the purposes of section 36(1)(iii) as the right to redeem these bonds does not lie with the lender at any given point of time?"*

Ground No. 2 to 4:

7. During the course of assessment the A.O also noticed that assessee has claimed interest expenditure u/s 36(1)(iii)of the Act in respect of perpetual bonds issued by the assessee bank. The details of such Perpetual Debt Instruments (IPDI) are as under:

Sr. No.	Series	Allotment Date	Book Value (Rs.)	Date of repayment	Amount of repayment (Rs.)
1.	DAG06RRB	August 9, 2006	233,00,00,000	August 9, 2016	233,00,00,000
2.	DJA07RB1	January 15, 2007	18,00,00,000	April 30, 2017	18,00,00,000
3.	DJA08RB1	October 1, 2008	500,00,00,000	April 30, 2018	500,00,00,000
4.	DSP06RRB	September 13, 2006	550,00,00,000	September 13, 2016	500,00,00,000
			1301,00,00,000		1301,00,00,000

On query the assessee explained that these bonds have been issued to various insurance companies, mutual fund provident fund and individuals. It is also explained that these bonds were in the nature of debentures and have superior claim over equity and cumulative preference shares of the bank. They have fixed the interest rate and interest is paid out of distributable profits of previous years or current years. The bank has discretion to exercise the call option for the said bonds as per the applicable guidelines. It is also submitted that the bank has exercised the call option in October, 2016 in respect of the said bonds. The bank has paid interest to the bond holders after deducting the tax at source where applicable at the rate prescribed. The said interest paid on these bonds has been claimed as interest expenses u/s 36(1)(iii) of the Act. Further, since interest paid to the bond holders unlike dividend income is not exempt as per the provision of the Act and the bondholders would have accordingly offered the same to income in their respective returns, disallowance of the said interest would result in double taxation of same income. The A.O was of the view that perpetual bonds was equity and they have equity like features i.e (a) perpetual in nature; (b) high loss absorption capacity, Provision for write down of principal or conversion to equity on trigger; (c) Discretionary pay-out with existence of full coupon discretion. The A.O was of the view that in case of perpetual bonds, where the lender does not have authority to claim refund of the amount given, the said amount cannot be held as borrowing and hence the interest on such bonds was not admissible as deduction u/s 36(1)(iii) of the Act. The A.O also placed reliance on the order u/s 263 passed by the Pr. CIT, Mumbai in the assessee's own case for A.Y. 2013-14. Therefore, the A.O disallowed the amount of

Rs.2,47,65,011/- holding that the same was not qualified for deduction u/s 36(1)(iii) of the Act.

8. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee. The relevant part of the decision is reproduced as under:

> *"9.3 I have carefully considered the facts of the case, discussion of the AO in the assessment order, oral contentions and written submission of the appellant and material available on record According to the AO, the assessee bank had issued Innovative Perpetual Bonds Debt Instrument (IPDI) which qualified as Tier I capital of the bank. The AO had further mentioned that the assessee had claimed deduction on account of interest paid on such bonds for an amount of Rs 2,47,65,45.011/- u/s 36(1)(m) of the Act. Before The AO, the bank has claimed that it has discretion to exercise the call option for such bonds as per applicable guidelines. The Appellant also claimed that the interest paid to the bond holders unlike dividend income was not exempt as per provision of the Act and the bondholders accordingly had offered the interest receipts as their income. The Appellant claimed that as per RBI Guidelines, the Perpetual Bond were treated as Tier I capital subject to certain conditions The investors do not get the right to redeem the bonds at any given point of time Only the issuing company can buy back the bonds from the investors Therefore, even if subsequently borrower buys back these bonds, it will not alter the nature and character of these bonds because it is the borrower and not the lender who has every right in such bonds to redeem it Further, in the appellant's case, monies borrowed by issuance of IPDIs have been disclosed in Schedule 4 of the balance sheet as "Borrowings" and the interest paid on the said bonds is debited to the Profit and Loss Account of the year by the appellant. The IPDI holders/lenders are not entitled to participate in the management of the affairs of the appellant and neither are they entitled to the share in the profits of the appellant, but are entitled to interest only upon the appellant making sufficient profits from its business activities. Though the interest payments are made out of distributable profits, they are payable prior to such distribution and are only computed by reference to the apparent net profits. The eligibility to claim the interest payments by the IPDI holder is at a stage prior to determination of profits and not at a later stage. Further, merely because interest is payable by the appellant only when there are sufficient profits, the payment of interest does not partake the character of payment out of profits, so as to be disallowed in determining taxable profits of the appellant. Not every payment that is quantified based on profits or becomes payable upon earning of profits becomes payment out of profits Furthermore, a payment, the making of which is conditional on profits being earned can very well be expenditure incurred for the purposes of earning profits. Also, the appellant has paid interest to the IPDI holders after deducting tax at source where applicable at the rates prescribed. Since the interest paid to the IPDI holders unlike dividend income is not exempt as per provisions of the Act and the IPDI holders would have accordingly offered the same to income in their respective returns,*

disallowance of the said interest would result in double taxation of the same income.

9.3.1 In this case, the appellant is a banking company and there is no dispute to the fact that the monies borrowed through IPDI by the appellant have been used for the purposes of business of the appellant. Even if it is considered that the money so borrowed actually formed the assets of the appellant in the shape of IPDI, still there cannot be any dispute that such IPDIs have been put to use for its business purposes and therefore the interest paid on such IPDIs would even be allowable as per the proviso to section 36(1)(ii) of the Act.

9.3.2 The appellant has also distinguished the decision of Punjab and Haryana High Court in Pepsu Road Transport Corporation (supra) relied upon by the Pr. CIT in his order under section 263 of the Act. In that case, the capital of the Petitioner Corporation was provided by the Union of India and the Punjab Government as per provisions of section 23 of the Road Transport Corporation Act, 1950 The Petitioner had paid interest on the capital, provided by the Government. On the question of whether the interest paid by the Petitioner can be regarded as deductible under section 36(1)(ii) of the IT Act, on facts, the High Court held that (a) the capital was not borrowed by the Petitioner, but was only provided by the Government, (b) there was no obligation on the Petitioner to repay the capital provided by the Government as per provisions of the Road Transport Corporation Act, 1950, and (c) hence, the interest paid on the capital, though termed as interest, would not be allowable as deduction under section 36(1)(ii) of the IT Act. The facts of aforesaid case are distinguishable as the assessee has borrowed money and it cannot be treated as provided by lenders. Further even though the terms of the IPDIs are perpetual in nature, as per the terms of the issue, all IPDIs are redeemed either at the first available opportunity or within a short while thereafter. This is mainly because if the Appellant fails to redeem the IPDIs at regular intervals, the subsequent issues of IPDIs would not be subscribed by the investors. Thus, in actual practice, the IPDIs are not perpetual as the intent is always to repay the sums borrowed. It is also the case that if the deduction of interest under section 36(1)(ii) of the Act is not allowable on the ground that the IPDI cannot constitute 'capital borrowed for the purposes of the Act, and consequentially, the interest expenditure looses its character of being an expenditure covered by section 36(1)(i), the expenditure continues to be a revenue expenditure incurred for the purpose of the business of the Appellant and hence would be allowable under section 37(1) of the Act. In view of these facts, it is clear that liability of bank in respect to Perpetual Bonds is totally different from capital of the bank, therefore, the Perpetual Bonds cannot be compared to the equity / share capital of the banks. Therefore, the interest expenses incurred in respect of such bonds are found to be allowable u/s 36(1)(iii)/37(1) of the Act. Ground No. 4 of the appeal is accordingly, allowed."

9. During the course of appellate proceedings before us the ld. D.R. submitted that perpetual bond issued by the assessee was of the kind of equity share rather than debt and the interest paid on such bonds

cannot be charged to the profit and loss account. The ld. D.R has referred the observations of the A.O mentioned at para 7.3 of the assessment order stating that the investors do not get the right to redeem the bond at any given point of time and only the issuing company buy back bonds from the investors and the said amount cannot be allowed as deduction as interest u/s 36(1)(iii) of the Act. The ld. D.R referred the decision of Punjab & Haryana High Court in the case of Pepsu Road Transport Corporation Vs. CIT, Patiala –I, ld. D.R has also referred Bank of India Vs. ACIT, ITA 1767/2048 of 2019 122 taxman.com 247.

On the other hand the ld. Counsel has supported the order of the ld. CIT(A). The ld. CIT(A) has also furnished copy of RBI letter dated 30.03.2010, wherein Innovative Perpetual Debt Instrument (IPDI) was classified under the head borrowings. The ld. Counsel has also referred page no. 1 of the paper book pertaining to schedule 4 of the balance sheet of the assessee bank wherein assessee has shown innovative perpetual debt instrument under the head borrowings. The ld. Counsel has also referred page no. 91 of the case law paper book wherein copy of the order of Hon'ble Punjab & Haryana High Court in the case of Pepsu Road Transport Corporation referred by the ld. D.R. in his argument was placed. By referring this case the ld. Counsel contended that fact of the case of the assessee are distinguishable from the facts of the case of Pepsu Road Transport Corporation. She stated that in the case of Pepsu Road Transport Corporation, it was the statutory requirement that the corporation shall pay interest on the capital borrowed from the central & state Government at such rates as may be fixed by the Government. In that case the capital of the corporation was to be provided by the Central & State Government whereas in the case of the assessee there was no

such statutory requirement and assessee has issued debt instruments without any compulsory requirement of contribution. The ld. Counsel has also referred decision of ITAT, Cochin in the case of Kerala Road Transport Corporation Vs. ITO 34 TTJ 101.

10. Heard both the sides and perused the material on record. The A.O has disallowed the claim of interest made u/s 36(1)(iii) by treating the perpetual bond as equity in nature. In support of his finding the A.O has placed reliance on the observation of the Pr. CIT made in the order u/s 263 in the case of the assessee for A.Y. 2013-14. These observations are as under:

(i) Perpetual bond with no maturity date;
(ii) right to redeem that assessee not with the Investors;
(iii) showing in the balance sheet as debt or borrowings.

However, it is observed that A.O has failed to controvert the undisputed fact that assessee has issued innovative perpetual debt instruments (IPDI) which carry a fixed rate of interest. The holder of these instruments had no right in management of the assessee bank. The assessee had paid interest to the bond holder after deducting tax at source. We have also perused the schedule 4 of the balance sheet placed in the paper book wherein at serial no. (vi) Innovative Perpetual Debt Instruments was placed under the head borrowings. The interest payment on these debt instruments was paid before computing profit of the assessee bank. We have also perused the detail of the redemption of perpetual debt instrument made by the assessee placed in the paper book reproduced as under:

Sr. No.	Series	Allotment date	Date of redemption	Principle amount	Interest for the period FY. 2009-10
1.	DAG06RRB	09.08.2006	09.08.2016	Rs.233,00,00,000	23,53,30,000
2.	DSP06RRB	13.09.2006	13.09.2016	RS.550,00,00,000	54,89,00,000

3.	DJA07RB1	15.01.2007	30.04.2017	Rs.18,00,00,000	1,79,63,998
4.	DJA08RB1	10.01.2008	30.04.2018	Rs.500,00,00,000	50,75,00,000
5.	BHSTN7.25%	24.06.2006	31.10.2016	USD 34,00,00,000	1,16,68,81,013
					2,47,65,45,011

It is further noticed that the assessee had demonstrated from the submission that these debt instruments were also redeemed. We also find that facts of the case of Pepsu Road Transport Corporation Vs. CIT 130 ITR 18 (P & H) relied upon by the ld. D.R. are distinguishable from the case of the assessee. In that case the capital was not borrowed but the same was provided by the Government as per the provisions of the Road Transport Corporation Act, 1950 whereas in the case of the assessee bank it had borrowed the money from the lenders. Similarly the fact of the case of Bank of India Vs. ACIT vide 122 taxman.com 247 (Mum ITAT) are also distinguishable from the case of the assessee. In that case the revenue had not discussed about the terms on which perpetual bond were issued. Therefore, the issue was remained back to the ld. CIT(A) for fresh adjudication. We have also perused the decision of Kerala Road Transport Corporation Vs. ITO 34 TTJ 101 Cochin, ITAT, wherein held that payment of interest was not made to the corporation but it was the payment made to the third parties. In the light of the above facts and circumstances merely that RBI recognizes to treat the said debt instruments as additional Tier/Capital would not change the nature of Innovative Perpetual Debt Instruments which were of the nature of long term borrowings and the interest paid was debited to the profit and loss account. These debt instruments were also redeemed on different dates as discussed supra in this order, therefore, we don't find any reason to interfere in the decision of ld. CIT(A), accordingly, this ground of appeal of the revenue is dismissed.

Ground No. 1:

11. The assessee has filed relevant supporting detail before the ld. CIT(A) in support of its claim that fees for professional/deduction services of Rs.4,42,424/- has been accounted under the head "other income" given in schedule 14 of the annual account and it had also filed application u/s 154 of the Act. The ld. CIT(A) has directed the A.O to dispose off the application u/s 154 filed by the assessee in accordance with law and procedure. After perusal of the fact and findings of the ld. CIT(A) as supra we don't find any error in the decision of the ld. CIT(A). Therefore, this ground of appeal of the revenue stand dismissed.

12. In the result, the appeal of the assessee is allowed while for the appeal of the revenue stand dismissed.

Order pronounced in the open court on 22.08.2022

Sd/-	Sd/-
(KAVITHA RAJAGOPAL)	(AMARJIT SINGH)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated 22.08.2022
PS: Rohit

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai