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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decision delivered on: 13.09.2023*

+ **ITA 521/2023 & CM Nos.47075-77/2023**

PR. COMMISSIONER OF INCOME TAX-7 Appellant
Through: Mr Puneet Rai, Sr Standing Counsel with
Mr Ashvini, Standing Counsel.

versus

ORIENTAL BANK OF COMMERCE LTD (NOW MERGED WITH
PUNJAB NATIONAL BANK LTD.) Respondent
Through: None.

+ **ITA 522/2023 & CM Nos.47082-84/2023**

PR. COMMISSIONER OF INCOME TAX-7 Appellant
Through: Mr Puneet Rai, Sr Standing Counsel with
Mr Ashvini, Standing Counsel.

versus

ORIENTAL BANK OF COMMERCE LTD (NOW MERGED WITH
PUNJAB NATIONAL BANK LTD.) Respondent
Through: None.

+ **ITA 524/2023 & CM Nos.47088-90/2023**

PR. COMMISSIONER OF INCOME TAX-7 Appellant
Through: Mr Puneet Rai, Sr Standing Counsel with
Mr Ashvini, Standing Counsel.

versus

ORIENTAL BANK OF COMMERCE LTD (NOW MERGED WITH
PUNJAB NATIONAL BANK LTD.) Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]



RAJIV SHAKDHER, J. (ORAL):

CM No.47075/2023 in ITA 521/2023

CM No.47082/2023 in ITA 522/2023

CM No.47088/2023 in ITA 524/2023

1. Allowed, subject to just exceptions.

ITA 521/2023 & CM Nos.47076-77/2023

ITA 522/2023 & CM Nos.47083-84/2023

ITA 524/2023 & CM Nos.47089-90/2023 [*Applications filed on behalf of the appellant seeking condonation of delay of 231 days in filing and 85 days in re-filing the appeals*]

2. These are the appeals concerning Assessment Year (AY) 2014-15 [ITA No.521/2023], AY 2015-16 [ITA No.522/2023] and AY 2013-14 [ITA No.524/2023].

3. *Via* the impugned order dated 04.03.2022, the Income Tax Appellate Tribunal [in short, “Tribunal”] allowed the appeals of the respondent/assessee which were filed not only with respect to the AYs referred to hereinabove, but also with regard to AY 2012-13.

3.1 Simultaneously, cross-appeals filed by the appellant/revenue were also disposed of, *via* the impugned order.

4. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the appellant/revenue, has helpfully placed a tabular chart before us, indicating therein the issues which arose for consideration in the aforementioned AYs. The details given in the tabular chart are set forth hereafter:



Sr. No.	Particulars	ITA 521/2023 [AY 2014-15]	ITA 522/2023 [AY 2015-16]	ITA 524/2023 [AY 2013-14]
1.	Addition on Section 14A	Rs.93.48 crores addition made by AO which was restricted by CIT to the tune of Rs.21.28 crores which was ultimately deleted by the Tribunal.	Rs.78.98 crores addition made by AO which was restricted by CIT to the tune of Rs.5.56 crores which was ultimately deleted by the Tribunal.	Rs.99.72 crores addition made by AO which was restricted by CIT to the tune of Rs.6.76 crores which was ultimately deleted by the Tribunal.
2.	HTM Securities	Addition of Rs.66.49 crores made by AO deleted by both the appellate authorities	Addition of Rs.71.45 crores made by AO deleted by both the appellate authorities	Addition of Rs.28.83 crores made by AO deleted by both the appellate authorities
3.	Depreciation on temporary erections	Addition of Rs.19.98 crores made by AO deleted by both appellate authorities.	Addition of Rs.27.92 crores made by AO deleted by both the appellate authorities	Addition of Rs.15.99 crores made by AO deleted by both the appellate authorities
4.	Interest on overdue deposits	Addition of Rs.17 crores made by AO deleted by both appellate authorities.	Addition of Rs.14 crores made by AO deleted by both the appellate authorities	Addition of Rs.18 crores made by AO deleted by both the appellate authorities
5.	Disallowance under Section 36(1)(vii)	Addition of Rs.1231.56 crores made by AO deleted by both appellate authorities.	Addition of Rs.315 crores made by AO deleted by both the appellate authorities	Addition of Rs.1062.73 crores made by AO deleted by both the appellate authorities

First Issue [Addition on account of Section 14A]

5. Insofar as the issue concerning disallowance under Section 14A of the Income Tax Act, 1961 [in short, “Act”] is concerned, the Tribunal, in our view, correctly appreciated the fact that the respondent/assessee was a nationalised bank and that in terms of the judgment rendered by the Supreme Court in *Maxopp Investment Ltd. v. Commissioner of Income Tax*, (2018) 402 ITR 640 (SC) qua shares are held as stock-in-trade, the provisions of Section 14A would have no applicability.

5.1 In this regard, the Tribunal also noticed the judgment rendered by the



Supreme Court in *South Indian Bank v. Commissioner of Income Tax*, [2021] 112 CCH 00051 (SC). The relevant portion of the said judgment which is culled out in the impugned order is extracted hereafter for the sake of convenience:

“25. Proceeding now to another aspect, it is seen that the Central Board of Direct Taxes (CBDT) had issued the Circular no. 18 of 2015 dated 02.11.2015, which had analyzed and then explained that all shares and securities held by a bank which are not bought to maintain Statutory Liquidity Ratio (SLR) are its stock-in-trade and not investments and income arising out of those is attributable, to business of banking. This Circular came to be issued in the aftermath of *CIT Vs. Nawanshahar Central Cooperative Bank Ltd.* [(2007) 15 SCC 611] / [(2007) 160 TAXMAN 48 (SC)] wherein this Court had held that investments made by a banking concern is part of their banking business. Hence the income earned through such investments would fall under the head Profits & Gains of business.”

[Also see *PCIT v. State Bank of Patiala*, 2017 (393) ITR 476 (P&H)]

6. In our opinion, the Tribunal has correctly deleted the disallowance made under Section 14A as the subject shares were concededly held as stock-in-trade.

Second Issue [HTM Securities]

7. The second issue is covered by the decision rendered by a coordinate bench of this court dated 11.05.2016 passed in ITA No.306/2016, titled *Principal Commissioner of Income-Tax-07 v. Oriental Bank of Commerce*. Thus, having regard to the decision of the coordinate bench, in our view, no substantial question of law arises for our consideration *qua* this issue.

Third Issue [Depreciation on temporary erections]

8. As regards the third issue, i.e., depreciation on temporary erections, the Tribunal has made the following observations:



“28. This ground is against the allowance of depreciation on temporary wooden structure at 100% by the ld. CIT(A). The AO has dealt with on facts, page no.9, para no.4 of his order the facts has not been disputed that the nature of furniture of wooden cabins, wiring etc. which are temporary in nature. The above ground of the department has to be dismissed as it is a covered matter in favour of the assessee by the order of the Co-ordinate Bench of ITAT in A.Y. 2007-08 in ITA No.1937/Del/11 and 1961 /Del/11 The matter was set aside to the AO for verification by the ITAT.”

9. Mr Rai has adverted to the decision in ITA No. 306/2016. This appeal arose out of the decision rendered by a coordinate bench of the Tribunal with regard to AY 2007-08 in ITA No.1937/Del/2011 and ITA No.1961/Del/2011.

9.1 A perusal of the said decision would show that the appellant/revenue did not raise any ground in the appeal with regard to the allowance of depreciation on temporary wooden structures. Therefore, applying the principle of consistency, in the AYs in issue, the respondent/assessee should have been allowed depreciation on temporary structures.

9.2 In this regard, no interference is called for with the decision of the Tribunal.

Fourth Issue [Interest on overdue deposits]

10. As regards the fourth issue, it is not disputed by Mr Rai that the said issue is covered by the decision dated 17.01.2018 rendered by a coordinate bench of this court in ITA No.57/2018, titled *Oriental Bank of Commerce v. Additional Commissioner of Income Tax*.

11. Having regard to this decision, no substantial question of law is required to be framed concerning the said issue.

Fifth Issue [Disallowance under Section 36(1)(vii) of the Act]

12. This brings us to the last issue, which is disallowance of provision



made for bad and doubtful debts.

13. As noted by the Tribunal, this issue is squarely covered in favour of the respondent/assessee by virtue of the judgment rendered by the Supreme Court in *Vijaya Bank v. CIT*, [2010] 323 ITR 166.

14. Thus, for the foregoing reasons, we are not inclined to entertain the above-captioned appeals.

15. As noted above, no substantial question of law arises qua any of the issues noted above.

16. The appeals are, accordingly, closed.

17. Consequently, the pending applications shall also stand closed.

18. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 13, 2023

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