

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE S/SHRI CHANDRA POOJARI, AM &amp; GEORGE GEORGE K., JM</b>

I.T.A. No.879/Coch/2004
Assessment Year : 1999-2000

The Catholic Syrian Bank Ltd., St. Mary's College Road, Thrissur-680 020.	<b>Vs.</b>	The Assistant Commissioner of Income-tax, Circle-1(1), Thrissur.
<b>(Assessee-Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	Shri C.Naresh, CA
<b>Revenue by</b>	Smt. A.S. Bindhu, Sr. DR

<b>Date of hearing</b>	19/02/2019
<b>Date of pronouncement</b>	20/02/2019

### **ORDER**

Per CHANDRA POOJARI, AM:

This appeal was originally filed by the assessee before the Tribunal and one of the issues was relating to computation of book profit u/s. 115JA of the Act which was adjudicated by the Tribunal in ITA No. 879/Coch/2004 dated 30/06/2009 as follows:

*"9. The fifth issue is the provision for NPA amounting to Rs. 8,61,53,052/- for computing book profit under section 115J. The assessee contended that the decision of the Hon'ble Supreme Court in the case of CIT-IV, Delhi Vs. HCL Comnet Systems and Services Ltd. (2008), 305 ITR 409 (SC) is directly on the issue. On the other hand, the learned Departmental Representative relied on the orders of the authorities below .*

10. On careful consideration of the rival submissions, we find that on identical set of facts, the Hon'ble Supreme Court in the case of HCL Comnet Systems and Services Ltd., cited supra has held that Item © of the Explanation to section 115J or 115JA is not attracted to the facts of the present case. The provision for bad and doubtful debt is made to cover up the probable diminution in the value of asset, i.e., debt which is an amount receivable by the assessee. Therefore, such a provision cannot be said to be a provision for liability, because even if a debt is not recoverable, no liability could be fastened upon the assessee. Any provision made towards irrecoverability of the debt cannot be said to be a provision for liability. Therefore, respectfully following the above decision of the Hon'ble Supreme Court, cited supra, we decide the issue in favour of the assessee."

2. Later, the issue was taken up by the Revenue before the High Court. The High Court vide judgment in ITA No. 23/2010 dated 30/06/2009 remitted the issue to the file of the Tribunal by holding as follows:

*"6 In fact, the specific stand of the Assessing Officer (AO) and the Revenue in the statutory appeal was that in computing minimum alternate tax payable under section 115JA, the provision for bad and doubtful debts has to be added back under clause (c) of the Explanation to Section 115JA(2), which speaks of the provisions made for meeting liabilities, other than ascertained liabilities. The Honourable Supreme Court in (2008) 305 ITR 409 (Commissioner of Income Tax-IV v. HCL Comnet Systems categorically held that the addition made under clause (c); of the provisions for bad and doubtful debts cannot be permitted. However, clause (g) as noticed in the question has now been introduced, which has retrospective effect from 01/04/1998 onwards. We notice that when the Tribunal considered the issue, Clause (g) was not introduced, which was introduced by the Finance Act, 2009. In such circumstances, it is only appropriate that the Tribunal considers the issue afresh on the basis of the facts and the specific provision of bad and doubtful debts provided for by the assessee-Bank. ITA No.23/2010, hence, shall stand remanded. The parties shall appear before the Tribunal on 11.01.2019 and the Tribunal shall consider the issue expeditiously, especially noticing the fact that the assessment is of the year 1999-2000."*

3. Hence, once again, the issue was heard afresh. The Ld. AR relied on the judgment of the Supreme Court in the case of Vijaya Bank vs. ITO (323 ITR 166)

wherein it was held that the amount set aside as provisions for bad and doubtful debts is nothing but bad debts. As such, it cannot be added to the net profit so as to arrive at the book profit u/s. 115JA of the Act. It was also submitted that clause (g) to section 115JA is not applicable to the assessee's case. The Assessing Officer is not justified in adding back the amount to the provisions made for bad and doubtful debts to profit shown in P&L account for the purpose of computation of book profit u/s. 115JA. The Ld. AR relied on the judgment of the Gujarat High Court in the case of CIT vs. Vodafone Essar Gujarat Ltd. (85 taxman.com 32 (Gujarat). He also relied on the judgment of the Karnataka High Court in the case of CIT vs. Syndicate Bank (101 taxman.com 171(Karnataka).

4. The Ld. DR submitted that the provision made towards bad and doubtful debts is to be added back in view of clause (g) to section 115JA of the I.T. Act.

5. We have heard the rival submissions and perused the record. By way of amendment of section 115JA, clause (g) was inserted by Finance Act (No. 2), 2009 with retrospective effect from 01/04/1998 which reads as follows:

*(g) the amount or amounts set aside as provision for diminution in the value of asset,....."*

In our opinion, the issue is squarely covered by the judgment of the Karnataka High Court in the case of Syndicate Bank, cited supra wherein the High Court remitted the matter to the file of the CIT(A) with a direction to look into the

records and record a finding as to whether the bad and doubtful debts are reduced from the loan and advances of the debtors from the assets side of the balance sheet and thereafter re-compute the income u/s. 115JA of the Act by observing as follows:

*3. The learned Counsel for the appellant contends that the Hon'ble Supreme Court in the case of CIT v. HCL COMNET SYSTEMS & SERVICES LTD. (2008) 174 Taxman 118/305 1TR 409, held that any provision made towards irrecoverability of the debt, cannot be said to be a provision for liability. Therefore, item (c) of the Explanation to Section 115JA, is not attracted to the case therein. It was held that the Assessing Officer was not justified in adding back the provision for doubtful debts. Subsequent to the order of the Hon'ble Supreme Court, an amendment was brought about to the Explanation of Section 115JA wherein clause (g) was added, which reads as follows:*

*"(g) the amount or amounts set aside as provision for diminution in the value of any asset,..."*

*4. The same fell for consideration before this Court in the case of CIT v. YOKOAWA INDIA LTD. [2012] 17 taxman.com 15/204 taxman 305 (Kar.). Therein, the judgment of the Apex Court in the case of Vijaya Bank v. CIT (2010) 190 Taxman 257/323 ITR 166 was considered, wherein the Apex Court considered the Explanation with regard to Item (c) of the Explanation of Section 115JA of the Act. It was held that a mere debit to the profit and loss account would constitute a bad and doubtful debt, but it would not constitute write off and that was very reason why the explanation stood inserted. That prior to the Finance Act, 2001, the assessee would take the benefit of a deduction under Section 36(1)(vii) of the Act by merely debiting the impugned bad debt to the profit and loss account and, therefore, the explanation was added on to state that a mere reduction of profits by debiting the amount to the profit and loss account per se would not constitute an actual write off. However, it was clarified that, besides debiting the profit and loss account and creating a provision for bad and doubtful debt the assessee correspondingly/simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors on the assets side of the balance sheet. Consequent to the explanation, the assesseees are now required, not only to debit the*

*profit and loss account but, simultaneously also reduce the loans and advances from the assets side. Therefore, it was held that if the bad debt or doubtful debt is reduced from the loans and advances of the debtors from the assets side of the balance sheet, the Explanation to Section 115 JA or JB is not at all attracted.*

*5. In the subsequent judgment of this Court in the case of CIT v. Syndicate Bank Syndicate House [2015] 54 taxmann.com 292/229 Taxman 584 .(Kar), while following the earlier order in the assessee's own case, the matter was remanded to the first Appellate Authority, with a direction to the authority to look into the records and to record a finding as to whether the bad and doubtful debts are reduced from the loans and advances of the debtors from the assets side of the balance sheet.*

*6. Under these circumstances, the learned Counsel for the revenue contends that since the said issue requires to be ascertained from the concerned authority, the said judgment may be followed, as the said judgment pertains to the assessee's own case itself.*

*7. The learned Senior Counsel appearing for the respondent's Counsel does not dispute the said proposition.*

*8. Under these circumstances, in view of the fact that the said issue has to be ascertained by the authority, we do not find it necessary that the said substantial question of law raised requires to be answered. Therefore, the matter stands remitted to the Commissioner of Income Tax (Appeals), with a direction to look into the records and to record a finding as to whether the bad and doubtful debts are reduced from the loan and advances of the debtors from the assets side of the balance sheet and thereafter, to re-compute the income under Section 115JA of the Act. The contention of the assessee if raised with regard to the applicability of Section 115JA of the Act, is kept open for adjudication before the Commissioner of Income Tax (Appeals).*

*Consequently, the appeal is disposed off."*

5.1. In view of the above, we remit this issue to the file of the Assessing Officer with similar direction as given by the Karnataka High Court in the case of Syndicate Bank cited supra.

6. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on this 20th February, 2019

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

Place: Kochi

Dated: 20<sup>th</sup> February, 2019

GJ

Copy to:

1. The Catholic Syrian Bank Ltd., St. Mary's College Road, Thrissur-680 020.
2. The Assistant Commissioner of Income-tax, Circle-1(1), Thrissur.
3. The Commissioner of Income-tax(Appeals), Thrissur.
4. The Pr. Commissioner of Income-tax, Thrissur.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin