



आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री पवन सिंह , न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

BEFORE HON’BLE SHRI PAWAN SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No.4485/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

Bobcards Limited Baroda House Behind Dewan Shopping Centre S.V. Road, Jogeshwari (West) Mumbai-400 102.	बनाम/ Vs.	ACIT-2(1)(1) Aaykar Bhawan M.K. Road Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACB-1989-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकरअपील सं./ I.T.A. No.4297/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT-2(1)(1) Aaykar Bhawan Room No. 561, 5 th Floor M.K. Road Mumbai-400 020.	बनाम/ Vs.	Bobcards Limited Baroda House Behind Dewan Shopping Centre S.V. Road, Jogeshwari (West) Mumbai-400 102.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACB-1989-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri H.N. Motiwala & Shri Dalpat Shah - Ld. ARs
Revenue by	:	Shri M.K. Singh - Ld.DR

सुनवाई की तारीख/ Date of Hearing	21/02/2019
घोषणा की तारीख / Date of Pronouncement	07/05/2019



आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid cross appeals for Assessment Year [AY] 2012-13 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-3 [CIT(A)], Mumbai, Appeal No. CIT(A)-3/IT-2/ACIT-2(1)(1)/16-17 dated 29/03/2017.

The grounds raised by revenue reads as under: -

On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in allowing the tax deducted on the service charges paid for the services provided by VISA/Master Card International, ignoring the pertinent fact that this payment was not and expenditure in the hands of the assessee and had not incurred for the purpose of the assessee's business and consequently, the TDS paid was not an allowable deduction.

The grounds raised by assessee reads as under: -

1.Addition of writeback of Provision for NPA in the computation of book profit u/s115JB.

1.1 The Commissioner of Income Tax (Appeals)-3, Mumbai, erred in upholding the action of the AO in making an addition of Rs.3,63,37,431/- being provision for card receivable (NPA) written back while computing book profit u/s 115JB ignoring the fact that the said write back of the provision was made out of the provisions of Rs.34,49,82,447/- made in the previous year relevant to A/Y:2007-08 as provided in clause (i) to the Explanation 1 to Sec 115JB.

1.2 The said CIT(A) erred in upholding the view of the AO that the provision of Rs.3,63,37,431/- which was written back during A/Y 2012-13 was not out of the - provision of Rs.34,49,82,447/- added back in the computation of book profit in the A/Y-.2007-08. The said CIT(A) erred in not considering the fact that the said provision for Card receivable is in the nature of "diminution in the value of assets" and any addition of the same was not required to be made to the book profit U/sec 115JB for A/Y:2007-08 according to the Law as it stand in that year and Sec. 115JB was amended by the Finance (No:2) Act, 2009 with retrospective effect from A/Y:2001-02 by insertion of Clause (i) in the Explanation 1 to section 115JB.

1.3 Without prejudice to the above, the said CIT(A) also erred in not considering the fact that in the A/Y-.2007-08 there was a loss of Rs.46,01,10,184/- as per books and that even if the provision of Rs.34,49,82,447/- made for Card receivable was added back in that year there was still a loss of Rs.11,51,27,737/-. Therefore, the provision made in A/Y:2007-08 should be deemed to have been disallowed in the computation of book profit. The appellant, therefore, submits that when part of the provision made in A/Y: 2007-08 which was deemed to have been disallowed was written back in A/Y:2012-13 the same has to be reduced while computing book profit for A/Y 2012-13.

2.Interest charged u/s 234B. 234C and 234D



The said CIT(A) erred in upholding the charge of interest u/s 234B, u/s 234C and u/s 234D when no such interest was chargeable.

3. *The appellant craves leave to add, amend, alter, modify, delete and/or change all or any of the above grounds on or before the date of hearing.*

2.1 The assessee being *non-banking financial company* is stated to be engaged in the business of credit card operations and financing payments through credit cards and debit card management. The assessment for impugned AY was framed by Ld. Assistant Commissioner of Income Tax-Circle 2(1)(1), Mumbai [AO] u/s. 143(3) on 07/03/2015. The following quantum additions / adjustments as made by Ld. AO are the subject matter of cross-appeals before us: -

No.	Nature of Addition	Amount Rs. (Rounded Off)
1.	<i>TDS deposited for payment made to VISA / Master Card – disallowed while computing income under normal provisions</i>	<i>Rs.44.13 Lacs</i>
2.	<i>Disallowance of provision write-back – added while computing income u/s 115JB</i>	<i>Rs.363.37 Lacs</i>

The Ld. first appellate authority has partly allowed assessee's appeal by deleting the disallowance listed at serial no. 1 but confirmed the additions made by Ld. AO u/s 115JB. The same has given rise to present cross-appeals before us.

2.2 So far as the grounds raised by revenue is concerned, it is undisputed position that the same stood covered in assessee's favor by the decision of this Tribunal in assessee's own case right from AYs 2003-04 onwards till AY 2011-12, the copies of which have been placed on record. The Ld. first appellate authority has provided relief to the assessee by placing reliance on the decision of this Tribunal rendered for AYs 2003-04 to 2005-06. Nothing on record suggest that there was any change in material facts or circumstances and the aforesaid rulings



were not applicable to the facts of the present AY. Therefore, no infirmity could be found in the impugned order. Resultantly, the revenue's appeal stands dismissed.

3.1 Facts *qua* the assessee's grievance are that during assessment proceedings, it transpired that the assessee, while computing *Book Profits* u/s. 115JB, reduced '*Provisions of card receivables w/back*' [in short 'write-back'] amounting to Rs.363.37 Lacs. However, it was noted that the '*Provisions of card receivables*' was not added back in the computation of *Book Profits* u/s 115JB in earlier years i.e. A.Ys. 2007-08 to 2010-11 when the provision was made. Accordingly, the assessee was asked to justify the same.

3.2 The assessee, vide reply dated 27/02/2015, submitted that the aforesaid provision was made during AYs 2007-08 to 2010-11 and the same was voluntarily disallowed while computing income under normal provisions. It was pointed out that during all these years, the company was incurring business losses and therefore, the *book profits* were shown as *Nil* without making any adjustments u/s 115JB as it would have no impact on the tax liability of the assessee. The attention was also drawn to the fact that Section 115JB was amended by the Finance (No.2) Act, 2009 with retrospective effect from AY 2001-02 in view of the decision of Apex Court rendered in *CIT Vs. HCL Commet Systems & Services Ltd. [305 ITR 409]*. By the amendment, clause (i) was added in Explanation 1 to Section 115JB with retrospective effect from AY 2001-02. The said clause provided that the *book profits* were to be increased by the amounts set aside as provision for diminution in the value of any asset. Therefore, by virtue of the retrospective amendment, the aforesaid



provisions were deemed to be added back to *Book Profits* u/s 115JB in all the earlier assessment years. The submissions were supported by the fact that in assessments made u/s 143(3) for earlier years, no working of *Book Profit* u/s 115JB was made. The provisions made from AYs 2007-08 to 2010-11 were tabulated and the revised working of *Book Profits* u/s 115JB was placed on record to submit that even after adding back the stated provisions in *Book Profits*, the resultant figure would still be a loss which would have no impact on tax liability of the assessee. It was further submitted that the write-back of Rs.363.37 Lacs have come out of provisions of Rs.3449.82 Lacs made in AY 2007-08 and therefore, the write-back was rightly deducted while computing *Book Profits* of the impugned AY.

3.3 However, the aforesaid submissions could not find favor with Ld. AO who opined that since the Book Profits of AYs 2007-08 to 2010-11 were not increased by the provisions, the write-back could not be allowed as deduction in the impugned AY. Resultantly, rejecting the assessee's submissions, the *Book Profits* were increased to that extent. The stand of Ld. AO, upon confirmation by Ld. first appellate authority, is under appeal before us.

4. The Ld. Authorized Representative for Assessee [AR], drawing our attention to the workings / documents placed in the *paper-book*, reiterated the submissions as made before Ld. AO and submitted that the write-backs were made out of provisions created in AY 2007-08 and therefore, the same was rightly claimed as deduction. The Ld. DR drew our attention to statutory provision of Section 115JB to submit that the



assessee did not fulfil the condition of claiming the write-back as deduction.

5.1 We have carefully considered the rival submissions and perused relevant material on record and deliberated on judicial pronouncements as cited before us. The basic facts are not under dispute. So far as the nature of provisions of card receivables is concerned, we find that Hon'ble Apex Court has succinctly carved out the fine distinction between *debts payable* by the assessee vis-à-vis *debts receivable* by the assessee in the cited case of *CIT Vs. HCL Commet Systems & Services Ltd. [305 ITR 409]* in the following manner: -

As stated above, the said Explanation has provided six items, i.e., Item Nos.(a) to (f) which if debited to the profit and loss account can be added back to the net profit for computing the book profit. In this case, we are concerned with Item No. (c) which refers to the provision for bad and doubtful debt. The provision for bad and doubtful debt can be added back to the net profit only if Item (c) stands attracted. Item (c) deals with amount(s) set aside as provision made for meeting liabilities, other than ascertained liabilities. The assessee's case would, therefore, fall within the ambit of Item (c) only if the amount is set aside as provision; the provision is made for meeting a liability; and the provision should be for other than ascertained liability, i.e., it should be for an unascertained liability. In other words, all the ingredients should be satisfied to attract Item (c) of the Explanation to Section 115JA. In our view, Item (c) is not attracted. There are two types of "debt". A debt payable by the assessee is different from a debt receivable by the assessee. A debt is payable by the assessee where the assessee has to pay the amount to others whereas the debt receivable by the assessee is an amount which the assessee has to receive from others. In the present case "debt" under consideration is "debt receivable" by the assessee. The provision for bad and doubtful debt, therefore, 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. In the present case, the debt is the amount receivable by the assessee and not any liability payable by the assessee and, therefore, any provision made towards irrecoverability of the debt cannot be said to be a provision for liability. Therefore, in our view Item (c) of the Explanation is not attracted to the facts of the present case. In the circumstances, the AO was



not justified in adding back the provision for doubtful debts of Rs.92,15,187/- under clause (c) of the Explanation to Section 115JA of the 1961 Act.

With a view to overcome the same, clause (i) was added to Explanation-1 to Section 115JB with retrospective effect from AY 2001-02 vide Finance (No.2) Act, 2009 which provided that the *Book Profits* should be increase by the amount set aside as provision for diminution in the value of any asset. It is undisputed fact that the assessee had filed return of income for AY 2007-08 much before the date of the said amendment and therefore, the said amendment could not be given effect to by filing revised return of income u/s 139(5) which already expired on 31/03/2009.

5.2 Proceedings further, it is also an undisputed fact that the write-back of Rs.363.37 Lacs has been made out of provisions of Rs.3449.82 Lacs made in AY 2007-08. Nothing on record controvert the aforesaid fact. We find that in AY 2007-08, the assessee had *book losses* of Rs.4601.10 Lacs and even after adding back the said provisions as envisaged by the amendment, the resultant figure would have still been a negative figure and the assessee would not have any liability to pay tax u/s 115JB. Therefore, we find substantial force in these arguments raised by Ld. AR before us.

5.3 Lastly, it is also evident from assessment order dated 27/01/2014 of immediately preceding AY 2011-12 that similar treatment given by the assessee to write-back of Rs.1899.12 Lacs in that year has been accepted by the revenue since no computation of *Book Profit* has been made in the assessment order. Therefore, following the principle of consistency, the assessee's claim was to be accepted, there being no change in factual matrix.



5.4 Bearing in mind the aforesaid factual matrix, we are of the considered opinion that the assessee was entitled for deduction of write-back while computing *Book Profits u/s 115JB* for the impugned AY. We order so. Ground No. 1 stand allowed.

5.5 Ground No. 2 contest levy of interest u/s 234. The same being consequential and mandatory would require no adjudication on our part. Ground No. 3 is general in nature.

6. The assessee's appeal stands partly allowed.

Conclusion

7. The revenue's appeal stands dismissed whereas the assessee's appeal stands partly allowed in terms of our above order.

Order pronounced in the open court on 07th May, 2019

Sd/-

(Pawan Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 07/05/2019
Sr. PS : Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.