

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.647/Bang/2020
Assessment Year: 2008-09

ITO Ward-1(1)(2) Bangalore	Vs.	M/s. Atria Hydel Power Ltd. No.11, 1 st Floor Commissariat Road Bengaluru PAN No.AACCA3754E
APPELLANT		RESPONDENT

Appellant by	:	Shri Kannan Narayanan, D.R.
Respondent by	:	Shri V. Narendra Sharma, A.R.

Date of Hearing	:	19.11.2020
Date of Pronouncement	:	20.11.2020

ORDER

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by revenue is directed against order of the CIT(A)-6, Bengaluru dated 20.2.2020. The revenue has raised following grounds of appeal:

- 1. The order of the Ld. CIT(A), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.*
- 2. The Ld. CIT(A) erred in deleting the addition of Rs.4,95,59,340/- made by the A.O. u/s 115JB.*
- 3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the Ld. CIT(A) be reversed and that of the Assessing Officer be restored.*

Page 2 of 5

2. Facts of the case are that the assessee is a company carrying on the business of generation and selling of power had filed Nil return of income under normal provisions of the Income Tax Act, 1961 ['the Act' for short]. The assessee also claimed that the provisions of section 115JB of the Act were not applicable to the assessee as there was no tax payable on the income as per the regular computation of income under the Act, which is a sine qua non for application of the provisions of the Act u/s 115JB of the Act. However, the A.O. while completing the assessment proceedings, invoked the provisions of section 115JB of the Act and subjected the income as shown in the P&L account as book profit assessable in terms of section 150JB of the Act.

3. On appeal, Ld. CIT(A) observed that there is a decision of the Tribunal in assessee's own case in ITA No.913/Bang/2007 dated 23.12.2008. He observed that the assessee is not liable to pay tax u/s 115JB of the Act by virtue of the position that no tax was payable under the normal provisions of the Act. Further, by way of additional ground, the following ground was raised before Ld. CIT(A) which is as follows:

“The provisions of section 115JB of the Act are not applicable to the appellant, which is engaged in the business of generating electricity.”

4. This ground was also decided in favour of the assessee by Ld. CIT(A) by following the order of the CIT(A) in assessee's own case in ITA Nos.534 to 536/Bang/2018 dated 31.10.2018 for the assessment years 2009-10, 2011-12 & 2012-13 and observed that assessee is not liable for payment of tax u/s 115JB of the Act. Against this, the revenue is in appeal before us.

5. Before us, Ld. D.R. submitted that in view of the following judgements the issue needs to be decided in favour of the revenue:-

Page 3 of 5

- i) CIT Vs. United India Insurance Co. (2020) 117 taxmann.com 849 (SC)
- ii) Pr. CIT Vs. New India Assurance Co. Ltd. (2020) 114 taxmann.com 223 (SC)

5.1 Further, it was submitted that the SLP was admitted by Hon'ble Supreme Court against the judgement of Hon'ble Karnataka High Court in the case of CIT Vs. IngVysya Bank Ltd. and assessee's own case (186 DTR 193) and hence the issue may be decided in favour of the revenue.

6. On the other hand, Ld. A.R. relied on the judgement of the Hon'ble Karnataka High Court in assessee's own case and also order of the Tribunal in assessee's own case.

7. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. Admittedly, this issue was considered by this Tribunal in assessee's own case in favour of assessee in earlier assessment year in ITA Nos.534 to 536/Bang/2018 dated 31.10.2018. Later, this was subject matter of appeal before the judicial High Court in the case of CIT Vs. Ing Vysya Bank Ltd. (186 DTR 193), Atria Power Corporation Ltd. Vs. Deputy Commissioner of Income-tax (IT Appeal No.229 of 2009 & 35 of 2014) and Atria Hydel Power Ltd. Vs. ITO (IT Appeal No.21 of 2012). The Hon'ble High Court decided the issue as follows:

***Held :** From close scrutiny of s. 115JB(2), it is axiomatic that every assessee being a company for the purposes of said section prepares its P&L ac for relevant previous year in accordance with provisions of Part II and Part III of Sch. VI of the Companies Act, 1956. The assessee being a banking company is not required to prepare its account in accordance with provisions of Part I: and Part III of Sch. VI of the Companies Act, 1956. The assessee being a banking company. its accounts (we prepared as per the Banking Regulation Act. 1949 and it is not obliged either to convene an annual general meeting or place its P&L a/c in such general meeting. A general meeting contemplated under s. 166 of the Companies Act. 1956 is not possible in the case of the assessee as there are no shareholders of the assessee. It is also worth*

Page 4 of 5

mentioning that under 3. 166 of the Companies Act, 1956 every company is required to hold a general meeting in each year and s. 201 mandates that every year the Board Of Directors of the company in general meeting shall lay before the company a balance sheet as at the end of the relevant period and also P&L arc for the period. Part if and Part III of Sch. VI to the Companies Act specify the method and manner of maintaining P&L a/c. It is also pertinent to note that the assessee under s. 210 of the Companies Act. 1956 is also required to lay its account before the annual general meeting. However such accounts 'lave to be prepared in accordance with the Banking Regulation Act, 1949 which is not possible for the reasons assigned supra. The submission that proviso to sub-s. (2) of s. 115JB creates a legal fiction cannot be accepted as under the aforesaid proviso, the company has to prepare the P&L a/c and to place it before the annual general meeting in accordance with provisions of s. 210 of the Companies Act, 1956. A banking company under s. 115JB(2) can prepare additional accounts as per Part II and Part Ill of Sch. VI of the Companies Act or fulfill the requirements of the proviso of sub-s. (2) but it cannot fulfill both the conditions. The machinery provisions provided in sub-s. (2) of s. 115JB would be rendered wholly unworkable in case of a banking company. It is also pertinent to mention here that the Companies Act, 1956 has excluded insurance, banking companies or the companies engaged in the generation or supply of electricity from the purview of s. 211(1) of the Companies Act, 1956 and resultantly from the purview of s. 115JB. Admittedly, the provisions of s. 115JB have been amended w.e.f. 1st April, 2013, the Memorandum Explaining the Provisions of Finance Bill, 2012 while explaining the amendments to s. 115JB, notes that in cases of certain companies such as insurance, banking and electricity companies, they are allowed to prepare the P&L a/c in accordance with the sections specified in their regulatory Acts. Thus, to align the provisions of the IT Act, 1961 with the Companies Act, 1956, it was decided to amend s. 115JB w.e.f. 1st April, 2013to provide that companies which are not required under s. 211 of the Companies Act, 1956 to prepare P&L a/c in accordance with Sch. VI of the Companies Act, 1956. P&L a/c prepared in accordance with the provisions of their Regulatory Act shall be taken as basis for computing book profit under s. 115JB. For the foregoing reasons, it is held that the provisions of s. 115JB(2) do not apply to the banking companies.—CIT vs. Union Bank of India (2019) 308 CTR (Born) 797: (2019) 177 DTR (Born) 305 concurred with.”

8. Being so, as on date, the issue raised by the Department entirely covered by the above judgement of the Hon'ble Karnataka High Court and also Tribunal in favour of the assessee and

Page 5 of 5

accordingly, we are inclined to decide the issue against the department and in favour of the assessee.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 20th Nov, 2020.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 20th Nov, 2020.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.