

आयकर अपीलीय अधिकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 50/Kol/2009
Assessment Year: 2002-03

Deputy Commissioner of Income-tax, Circle-3, Kolkata.	Vs.	The peerless General Finance & Investment Co. Ltd., (PAN:AABCT3043L)
Appellant		Respondent

Date of Hearing (Virtual)	24.11.2020
Date of Pronouncement	03.12.2020
For the Appellant	Shri Immokaba Jamir, CIT, DR
For the Respondent	Shri S. K. Tulsian, Advocate & Mrs. Puja Somani, AR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the revenue is against the order of Ld. CIT(A)-1, Kolkata dated 30.09.2008 for A Y 2002-03 for assessment year 2002-03.

2. At the outset, it has been brought to our notice that this is the second round of litigation before this Tribunal. According to the Ld. Counsel Shri S. K. Tulsian, during the first round, the Ld. CIT(A) had given relief to the assessee on the issue of computation of book profit/MAT against the action of AO in adding back the provision for diminution in investment to the tune of Rs.29,81,59,433/- and provision for NPA (Non-Performing Assets) to the tune of Rs.19,57,60,485/- which were debited in the P&L Account. The Ld. CIT(A) while giving relief to the assessee on this issue, took note of the Special bench (Tribunal) decision in the case of M/s. Usha Martin Industries Ltd. reported in 288 ITR (AT) 63 and held that provision for diminution in investments of Rs.29,81,59,433/- and provision for NPA of Rs.19,57,60,485/- could not be treated as unascertained liability as envisaged in clause (c) below Explanation to section 115JB(2) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) and, therefore, he directed the AO to exclude the

provision for diminution in investment and provision for NPA while computing the assessee's book profit/MAT. Thereafter, when the matter travelled to the Tribunal, during the first round, the Tribunal was pleased to reverse the order of Ld. CIT(A) by holding as under:

"7. The next issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in directing the Ld. AO to exclude the provision for diminution in value of investments amounting to Rs.29,81,59,433/- and provision for Non-Performing Assets amounting to Rs.19,57,60,485/- while computing the book profits u/s. 115JB of the Act, in the facts and circumstances of the case.

8. During the course of hearing, the Ld. AR fairly admitted that the assessee had challenged the retrospective amendment in this regard brought in section 115JB of the Act by way of a Writ Petition before the Hon'ble Calcutta High Court in WP No. 1069 of 2010 and the same was dismissed by the Hon'ble Court vide its order dated 3.5.2017. Accordingly, he fairly agreed with the decision of the Ld. AO in this regard. Hence, the Ground Nos. 5 to 7 raised by the revenue are allowed."

3. Aggrieved by the aforesaid decision of the Tribunal, the assessee preferred an appeal before the Hon'ble High Court wherein the Hon'ble High Court vide its order dated 19.03.2019 was pleased to remand only this issue back to Tribunal with a direction to proceed and determine the issue in the light of the decision of the Hon'ble High court of Gujarat in CIT Vs. Vodafone Essar Gujarat Ltd. 397 ITR 55 and other case laws on the subject by observing as under:

"The Court:- Mr. Chatterjee, learned Senior Advocate for the appellant wants the Tribunal to reconsider its impugned decision made on 2nd June, 2017 for the assessment year 2003-04. The ground for his contention is a subsequent judgment of a Division Bench of the Gujarat High court (Commissioner of Income-tax-IV Vs. Vodafone Eassar Gujarat Ltd.) reported in 397 ITR 55 (Gujarat) which covers the case, according to him.

Prima facie, the contention of Mr. Chatterjee has some merit. We think that out of the questions suggested by the appellant to be framed by the Court for hearing of the appeal under section 260A of the Income-tax Act, 1961 the one set out below is important:

Whether the learned tribunal erred in failing to appreciate that in view of the reduction of the amounts against diminution in value of investments and non-performing loans and advances and other contingencies from the respective heads in the asset side of the Balance Sheet of the Petitioner and non showing of them as provision in the audited accounts, such items and amounts should be treated as write off and not provision and hence not covered by Clause (i) of Explanation 1 of section 115JB(2) of the Income Tax Act?

We are of the opinion that although the decision of the Gujarat High Court came a few days after the order of the Tribunal while rehearing the appeal should assume as if the said judgment was pronounced earlier rehear the appeal on remand on the issue only considering the said decision and all other relevant judgments on this subject and proceed to determine the same within a period of six months from the date of communication of this order.

The appeal (ITAT 336 of 2017) and the application (GA 3313 of 2017) are disposed of.”
(Emphasis given by us)

4. Further, the Ld. AR drew our attention to the fact that there was a mistake in para 1 of the Hon’ble High Court order wherein the assessment year was shown as AY 2003-04 which was corrected by the Hon’ble High Court vide order dated 15.07.2019 wherein the AY 2003-04 was rectified as AY 2002-03 (refer page no. 43 of paper book). And the question of law before the Hon’ble High Court can be noted (supra) and in the light of the above, the question of law with the permission of both parties is redrafted as under:

“Whether in view of the reduction of the amounts against diminution in value of investments and non-performing loans and advances and other contingencies from the respective heads in the asset side of the Balance Sheet of the Petitioner and non showing of them as provision in the audited accounts, such items and amounts should be treated as write off and not provision and hence not covered by Clause (i) of Explanation 1 of section 115JB(2) of the Income Tax Act?”

The issue that has to be examined is whether clause (i) of Explanation 1 of section 115JB(2) of the Act is attracted in view of the fact that whether the amounts shown by the assessee which has been reduced against diminution in value of investments and non-performing loans and advances can be termed as ‘provision’ when according to assessee, there was an actual write off of the said amounts not only by debiting the same in the Profit & Loss Account but also by reducing the same from the asset side of the Balance Sheet to the extent of the corresponding amount. According to Ld. AR, even though the assessee has claimed that the diminution in value of investments and non-performing assets was termed as ‘provision’ the fact was that the assessee has actually written it off in the Asset Side of the Balance Sheet and so, according to Ld. AR, it is settled principle of law that the nomenclature or accounting entries cannot determine true character of a transaction, so in this case it is not a provision when there was actual write off. Therefore, according to Ld. AR the clause (i) of Explanation (1) to section 115JB(2) of the Act will not apply. And relied on the judgment of the Hon’ble Gujarat High Court in the case of Vodafone Essar Gujarat Ltd. (supra), therefore, he wants us to uphold the direction given by the Ld. CIT(A) to exclude both the amounts shown as diminution in investments and the amount of NPA amounting to Rs.29,81,59,433/- and Rs.19,57,60,485/- respectively while computing the assessee’s book profit and MAT.

5. Per contra, the Ld. CIT, DR vehemently opposing the plea of the assessee contended that the AO has followed the judgment of the Hon'ble Madras High Court in the case of M/s. Breadshell Ltd. 244 ITR 256 and therefore, he does not want us to interfere, therefore, according to him, Tribunal was correct in the first round of litigation when it upheld the action of the AO.

6. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the short issue that has been raised before us is pertaining to the AO's action wherein while computing the book profit u/s. 115JB of the Act, he added back the provision for diminution in value of investments and the amount of NPA amounting to Rs.29,81,59,433/- and Rs.19,57,60,485/- respectively which were debited by the assessee in P&L Account. So, the question is whether this action of AO can be justified by invoking clause (c) or (i) of Explanation (1) to sub-section (2) of section 115JB of the Act which reads as under:

“Explanation (1) – For the purpose of this section, “book profit” means the profit as shown in the statement of profit and loss for the relevant previous year prepared under sub-section (2), as increased by –

(a)

(b)

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d)

(e)

(f)

(g)

(h)

(i) the amount or amounts set aside as provision for diminution in the value of any asset”

7. We note that the Ld. CIT(A) has correctly held that while computing book profit, provision for diminution in value of investments and provision for non-performing asset, since were not liabilities, clause “(c)” in Explanation (1) to sub-section (2) of section 115JB of the Act was not attracted. And hence, he rightly directed the AO not to add back these amounts to the book profit. However, the question now before us is whether clause (i) of Explanation (1) to sub-section (2) of section 115JB of the Act could be attracted in the facts of this case. We note that sub-clause (i) of Explanation

(1) to section 115JB of the Act has been inserted by the Finance Act, 2009, with retrospective effect from 01.04.2001 and it is noted pertains to the amounts set aside as provision for diminution in value of any assets. In this case, we note that the admitted fact is that assessee has shown provision for diminution in value of investment to the tune of Rs.29,81,59,433/- and provision for NPA amounting to Rs.19,57,60,485/- which was debited to the P&L Account. And since both the amounts are in respect of investments and asset (non-performing assets) pertained to the asset item in the Balance Sheet, so, *per-se* clause (i) of Explanation (1) of section 115JB of the Act is attracted. However, the assessee's case is that though these two items have been shown as provision "*it is not a provision but it is actual write off*", therefore, clause (i) of Explanation (1) to sub-section (2) of section 115JB of the Act is not applicable and for urging so, the assessee has relied on the decision of the Hon'ble Gujarat High Court in the case of *Vodafone Essar Gujarat Ltd.* (supra) wherein the Hon'ble High Court while deciding a similar issue had held as under:

"13. Thus, the Supreme Court in case of HCL Comnet Systems & Services Ltd. (supra) held that clause (c) of the explanation would apply to the debt payable by the assessee. In such a case, if the amount is set aside as a provision and provision is made for meeting a liability other than ascertained liability, clause (c) would come into force and such provision would be added in computation of book profit for the purpose of 115JA of the Act. This clause, however, would not cover a provision made for a debt which is receivable by the assessee. It was observed that the provision for bad and doubtful debts which is made to cover up probable diminution in the value of the asset, cannot be said to be a provision for liability because even if the debt is not recoverable, no liability could be fastened on the assessee.

14. To overcome such view of the Supreme Court, the Revenue added clauses (g) and (i) to the explanations in section 115JA and 115JB of the Act respectively with retrospective effect. With such addition now the book profit for the purpose of section 115JB of the Act would be increased by the amount or amounts set aside as provisions for diminution in the value of any asset. The explanatory note for introduction of such amendment clarified that the new clause (i) was inserted "so as to provide that if any provision for diminution in the value of any asset has been debited to the profit and loss account, it shall be added to the net profit as shown in the profit and loss account for the purpose of computation of book profit." This legislative change thus was clearly necessitated on account of the judgment of the Supreme Court in case of HCL Comnet Systems & Services Ltd. (supra) holding that under clause(c) to the explanation any provision for bad or doubtful debts for diminution in the value of any asset cannot be added to the book profit of the assessee.

15. This Court in Deepak Nitrite Ltd. (supra), as noted, held that in view of such statutory change, the decision of Supreme Court in case of HCL Comnet Systems & Services Ltd. (supra), would allow the Revenue to make such addition. Delhi High Court in case of CIT v. ILPEA Paramount (P.) Ltd. [2010] 192 Taxman 65/[2011] 336 ITR 54 had come to similar conclusion. Seen from this light and in this context, the decision in case of Deepak Nitrite Ltd. (supra), lays down the correct proposition.

16. We may however, appreciate the 'implication of the ratio laid down by the Supreme Court in case of Vijaya Bank (supra), on the true interpretation of clause(i) to the explanation 1 and the decisions of Karnataka High Court in cases of Yokogawa India Ltd. (supra) and Kirloskar Systems Ltd. (supra). Vijaya Bank (supra) was a case arising under section 36(1)(vii) of the Act. The assessee before the Supreme Court was bank. The issue considered by the Supreme Court was whether it was imperative for the assessee bank to close the individual account of each of its debtors in its books or a mere reduction in the loans and advances or debtors on the asset side of its balance sheet to the extent of the provision for bad debt, would be sufficient to constitute a write-off. In this context, the Supreme Court considered the issue as to the manner in which the actual write off takes place under the accounting principle. It was noticed that prior to 1.4.1989 amendment in section 36(1)(vii), even the provision for the bad debt could be treated as write off. After 1.4.1989 however, a mere provision for bad debt would not be entitled to deduction under section 36(1)(vii) of the Act. In context of such statutory change, the Supreme Court referred to the decision in case of Southern Technologies Ltd. Vs. Jt. CIT (2010) 320 ITR 577/187 Taxman 346, in which the following observations were made:

"Prior to April, 1, 1989, the law, as it then stood, took the view that even in cases in which the assessee(s) makes only a provision in its accounts for bad debts and interest thereon and even though the amount is not actually written off by debiting the profit and loss account of the assessee and crediting the amount to the account of the debtor, the assessee was still entitled to deduction under section 36(1)(vii). (See CIT V. Jawala Prasad Tiwari (1953) 24 ITR 537 (Born.) and Vithaldas H Dhanjibjai Bardanwala v. CIT (1981) 130 ITR 95 (Guj.)] Such state of law prevailed up to and including the assessment year 1988-89. However, by insertion (with effect from April 1, 1989) of a new Explanation in section 36(1)(vii), it has been clarified that any bad debt written off as irrecoverable in the account of the assessee will not include any provision for bad and doubtful debt made in the accounts of the assessee. The said amendment indicates that before April 1, 1989, even a provision could be treated as a write off. However, after April 1, 1989, a distinct dichotomy is brought in by way of the said Explanation to section 36(1)(vii). Consequently, after April 1, 1989, a mere provision for bad debt would not be entitled to deduction under Section 36(1)(vii). To understand the above dichotomy, one must understand 'how to write off. If an assessee debits an amount of doubtful debt to the profit and loss account and credits the asset account like sundry debtor's account, it would constitute a write off of an actual debt. However, if an assessee debits 'provision for doubtful debt' to the profit and loss account and makes a corresponding credit to the 'current liabilities and provisions' on the liabilities side of the balance-sheet, then it would constitute a provision for doubtful debt. In the latter case, the assessee would not be entitled to deduction after April 1, 1989."

17. The Supreme Court (in Vijaya Bank) further observed as under:

"7. One point needs to be clarified. According to Shri Bishwajit Bhattacharya, learned Additional Solicitor General appearing for the Department, the view expressed by the Gujarat High Court in the case of Vithaldas H. Dhanjibhai Bardanwala [supra] was prior to the insertion of the Explanation vide Finance Act, 2001, with effect from 1st April, 1989, hence, that law is no more a good law. According to the learned counsel, in view of the insertion of the said Explanation in Section 36(1)(vii) with effect from 1st April, 1989, a mere debit of the impugned amount of bad debt to the Profit and Loss Account would not amount to actual write off. According to him, the Explanation makes it very clear that there is a dichotomy between actual write off on the one hand and a provision for bad and doubtful debt on the other. He submitted that a mere debit to the Profit and Loss Account would constitute a provision for bad and doubtful debt, it would not

constitute actual write off and that was the very reason why the Explanation stood inserted. According to him, prior to Finance Act, 2001, many assessee used to take the benefit of deduction under Section 36(1)(vii) of 1961 Act by merely debiting the impugned bad debt to the Profit and Loss Account and, therefore, the Parliament stepped in by way of Explanation to say that mere reduction of profits by debiting the amount to the Profit and Loss Account per se would not constitute actual write off. To this extent, we agree with the contentions of Shri Bhattacharya. However, as stated by the Tribunal, in the present case, besides debiting the Profit and Loss Account and creating a provision for bad and doubtful debt, - the assessee-Bank. had correspondingly /simultaneously obliterated the said provision from it's accounts by reducing the corresponding amount from Loans and Advances/debtors on the asset side of the Balance Sheet and. end of the year, the figure in the loans and advances or the debtors on the asset side of the Balance Sheet was shown as net of the provision "for impugned bad debt". In the judgment of the Gujarat High Court in the case of Vithaldas H Dhanjibhai Bardanwala [supra]. A mere debit to the Profit and Loss Account was sufficient to constitute actual write off whereas, after the explanation, the assessee(s) is now required not only to debit the Profit and Loss Account but simultaneously also reduce loans and advances or the debtors from the asset side of the Balance Sheet to the corresponding amount so that, at the end of the year, the amount of loans and advances/ debtors is shown as net of provisions for impugned bad debt. This aspect is lost sight of by the High Court in it's impugned judgement. In the circumstances, we hold, on the first question, that the assessee was entitled to the benefit of deduction under Section 36(1)(vii) of 1961 Act as there was an actual write off by the assessee in it's Books, as indicated above."

18. It can thus be seen that in case of Southern Technologies Ltd. (supra), the Supreme Court explained that if an assessee debits an amount of doubtful debt to the Profit and Loss account and credits the asset account like sundry debtor's account, it would constitute a write-off of an actual debt. On the other hand, if an assessee debits provision for doubtful debt to the Profit and Loss account and makes a corresponding credit to the current liabilities and provisions on the liabilities side of the balance sheet, then it would constitute a provision for doubtful debt and in such a case after 1.4.1989, the assessee could claim no deduction under section 36(1)(vii) of the Act.

19. This principle was further clarified in case of Vijaya Bank (supra) by observing that in case on hand, the assessee besides debiting the profit and loss account and creating a provision for bad and doubtful debt, had simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors on the asset side of the balance sheet and consequently, at the end of the year, the figure of loans and advances or the debtors on the asset side of the balance sheet was shown as net of the provision for bad debt. Thereafter, the Supreme Court rejecting the Revenue's contention that for the bank to take benefit of section 36(1)(vii), must close the account of the debtors, decided the question in favour of the assessee.

20. Above decision of Supreme Court in case of Southern Technologies Ltd. (supra) and Vijaya Bank (supra) thus bring out a clear distinction between a case where the assessee may make a provision for doubtful debt and a case where the assessee after creating such a provision for bad and doubtful debt by debiting in Profit and Loss account also simultaneously removes such provision from its account by reducing the corresponding amount from the loans and advances on the asset side of the balance sheet. The later would be an instance of write-off and not a mere provision.

21. Karnataka High Court in case of Yokogawa India Ltd. (supra) applying such principle found that case on hand was one of a debt which was an amount receivable by the assessee and not any liability payable by the assessee and observed that clause (c) of the

explanation to section 115JA/115JB, would not apply. In context of applicability of clause (i) to the explanation, relying on the decision of Supreme Court in case of Vijaya Bank (supra), the Court observed that there is a dichotomy between actual write off and provision for bad and doubtful debt. A mere debit to the Profit and Loss account would constitute a bad and doubtful debt but it would not constitute actual write-off. However, if simultaneously such amount is obliterated from the accounts by reducing corresponding loans and advances on the asset side, the same would amount to a write off. It was concluded as under:

" Therefore, after the Explanation the assessee is now required not only to debit the P &L A/c but simultaneously also reduce the loans and advances or the debtors from the assets side of the balance sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/debtors is shown as net of the provisions for the impugned bad debt. Therefore, in the first place if the bad debt or doubtful debt is reduced from the loans and advances or the debtors from the assets side of the balance sheet the Explanation to s.115JA or JB is not at all attracted."

22. *In case of Kirloskar Systems Ltd. (supra), the Karnataka High Court adopted the same principle.*

23. *By way of culmination of above judicial pronouncements and statutory provisions, the situation that arises is that prior to the introduction of clause (i) to the explanation to section 115JB, as held by the Supreme Court in case of HCL Comnet Systems & Services Ltd. (supra), the then existing clause (c) did not cover a case where the assessee made a provision for bad or doubtful debt. With insertion of clause (i) to the explanation with retrospective effect, any amount or amounts set aside for provision for diminution in the value of the asset made by the assessee, would be added back for computation of book profit under section 115JB of the Act. However, if this was not a mere provision made by the assessee by merely debiting the Profit and Loss Account and crediting the provision for bad and doubtful debt, but by simultaneously obliterating such provision from its accounts by reducing the corresponding amount from the loans and advances on the asset side of the balance sheet and consequently, at the end of the year showing the loans and advances on the asset side of the balance sheet as net of the provision for bad debt, it would amount to a write off and such actual write off would not be hit by clause (i) of the explanation to section 115JB. The judgment in case of Deepak Nitrite Ltd. (supra) fell in the former category whereas from the brief discussion available in the judgment it appears that case of Indian Petrochemicals Corpn. Ltd. (supra), fell in the later category.*

24. *Viewed from this angle and subject to the observations and clarifications made above, in our view, there is no conflict between the two judgments and both operate in different fields. Reference is answered accordingly."*

8. We note that in the above judgment, the Hon'ble High Court has considered the following judgments:

- i. CIT v. Deepak Nitrite Ltd. [Tax Appeal o. 1918 of 2009, dated 17-8-2011] (para 4)
- ii. CIT v. HCL Comnet Systems & Services Ltd. (2008) 305 ITR 409/174 Taxman 118 (SC)

- iii. CIT v. Indian Petrochemicals Corpn. Ltd. [2016] 74 taxmann.com 163 (Guj.) (para 4),
- iv. CIT v. Yokogawa India Ltd. [2012] 17 taxmann.com 151204 Taxman 305 (Kar.) (para 4),
- v. CIT v. Kirloskar Systems Ltd. [2013] 40 taxmann.com 124/[2014] 220 Taxman 1 CKar.) (para 4),
- vi. Vijaya Bank v. CIT [2010] 323 ITR 166/190 Taxman 257 (SC) (para 4),
- vii. CIT v. ILPEA Paramount (P.) Ltd. [2010] 192 Taxman 65/[2011] 336 ITR 54 (Delhi) (para 15) and
- viii. Southern Technologies Ltd. v. Jt. CIT [2010] 320 ITR 577/187 Taxman 346 (SC) (para 16).

9. We note that after considering the aforesaid judgments rendered in the above case laws, the Hon'ble High Court of Gujarat held that if the provision for diminution in value of investment is not a mere provision made by the assessee by merely debiting the profit and loss account and makes a credit to the "current liabilities and provisions" on the liabilities side of the balance sheet, then it would constitute provision for bad and doubtful debt, but if an assessee debits an amount of doubtful debt to the profit and loss account and simultaneously obliterate such provision from its account by reducing the corresponding amount from the loans and advances on the asset side of the balance sheet *and consequently, at the end of the year shows the loans and advances on the asset side of the balance sheet as net of the provision for bad debt, it would amount to an actual write off* and such actual write off would not attract clause (i) of the Explanation to sub-section (2) of section 115JB of the Act.

10. When we apply this law to the facts of this case, Ld. AR Shri S. K. Tulsian, Advocate drew our attention to the P&L Account for the year ending on 31.03.2002 which is found placed at page 34 of the paper book wherein we note that the assessee has debited "provision for diminution in value of investments amounting to Rs.29,81,59,433/- which is shown as Rs.298.16 million in the Balance Sheet and provision for NPA amounting to Rs.19,57,60,485/- has been shown as Rs.195.76 million". According to Ld. AR, the said provision for diminution in value of investments and provision for non-performing assets was not a mere provision debited

in the P&L Account but is an actual write off, since the said provisions were simultaneously removed from the corresponding asset side of the Balance Sheet and for that he drew our attention to page 35 of the paper book wherein we note that a sum of Rs.2,111.92 million was reduced from investments which has been computed as under:

Provision for diminution of Investments	Rs. In Million	Page No.
Opening Balance (page 35)	2125.74	35
Add: Provision for current year (FY 2001-02)	<u>298.16</u>	35
	<u>2423.90</u>	
Less: Write back of provision	<u>312.07</u>	35, 2, 26
	<u>2111.82</u>	

SCHEDULE – 6

INVESTMENTS (TRADE)

	<u>As at 31.03.2002</u>
i) Investment Fixed Deposits	Rs. 13375075064.56
ii) Investment in Mutual Funds	Rs. 4448034179.70
iii) Investment in Postal savings	Rs. 376614266.17
iv) Investment in shares-Subsidiaries and Associate Companies	Rs. 222506969.00
v) Investment in shares-Other companies	Rs. 2678873378.26
vi) Investment in debentures	Rs. 3555071423.29
vii) Investments in PSU Bonds	Rs. 28465712148.14
viii) Investments in Government Securities	<u>Rs. 18096837590.63</u>
	<u>Rs. 71218723999.75</u>
Less: provision for Diminution in value of investments	<u>Rs. 2111824110.95</u>
	<u>Rs. 69106899888.80</u>
	Rs. 69106.90
Rupees in Million	

11. Thus we note from a perusal of page 34 of paper book that Rs.298.16 million which was the amount shown as provision for diminution in the value of investment for the current year AY 2002-03 (FY 2001-02) was debited to the Profit & Loss Account. Further, we note that provision for diminution in the value of Investments has been written back during the year which amounts to Rs.312.08 million. This amount it can be seen from a perusal of page 2 of the paper book that it has been credited in the Profit and Loss A/c under the head 'Miscellaneous Income'. Moreover, our attention was drawn to page 26 of paper book, which is the Schedule - 9 of the Audited Accounts wherein Point No.13(f) we note it has been clearly mentioned that Miscellaneous

Income include 'Provision for Diminution in Investments' and 'Loans and Advances' being no longer required written back amounting to Rs.454.41 million.

The break up of Rs.454.41 million is as follows:

Provision for Diminution in Investments	- Rs.312.07 million
Provision for Non-Performing Assets	- <u>Rs.139.34</u> million
	Rs.451.41 million

12. We note from a perusal of page 35 of paper book that this closing balance of Rs.2111.82 million was reduced from Schedule 6 - Investments (Trade) of the audited accounts. Thus, we note that the Provision of Rs.298.16 million created during the year was debited in the Profit and Loss A/c for the year and Provision written back during the year amounting to Rs.312.08 million was credited in the Profit and Loss A/c. This shows that it was not only a mere creation of 'Provision for diminution in Investments' by debiting the Profit and Loss account but simultaneously the corresponding amount from Investments shown on the Asset side of the Balance Sheet was also reduced/adjusted. In other words, the Investments in the Asset Side that was recorded in the books were the net of provision. Thus, in view of the above facts, the said Provision for diminution in Investments would amount to an actual "write off" of Provision from the Assets side and therefore would not attract clause (i) of the Explanation to sub-section (2) of section 115JB of the Act as held by the Hon'ble Gujarat High Court in the case of Vodafone Essar (supra) since Assets side of the Balance Sheet has also been accordingly reduced in the present case of the assessee, so, we agree that provision for diminution in investment was not a mere provision but it was actual write off and so, clause (i) of Explanation (1) of sub-section (2) of section 115JB of the Act is not attracted to the facts of this case and so we uphold the action of Ld CIT(A) on this issue.

13. Next coming to the event of non-performing asset is concerned, our attention was drawn to page 34 of paper book the assessee had created 'Provision for non-performing assets' amounting to Rs.19,57,60,485/- and debited the same in the Profit and Loss Account for the year ending 31-03- 2002. Our attention was invited to 'Schedule 7 - Current Assets, Loans and Advances', of the Audited Accounts which is found placed at

page 36 of the paper book wherein we note that after deducting the accumulated Provision for non- performing assets amounting to Rs.2620.53 million, the closing balance of Loans and Advances was arrived at Rs.5576.16 million.

14. And thereafter, the Ld. AR drew our attention to page 36 of the paper book schedule 7 which shows current assets, loans and advances and pages 6 and 7 of the written statement which is reproduced as under:

Non-performing asset (bad debt). The opening provision of Rs.2564.11 as on 01.04.2011 million was arrived at as under:

Opening Balance as on 01.04.2001 (refer Schedule-7 of the Audited Accounts, page 36 of the paper book)	Rs. In Million	Rs. In million
i) Loan to State Govt./Govt. Company, Undertaking dept. etc.	2.98	
ii) Loan secured against Mortgage/hypothecation of properties		
Shares/Vehicles (incl. subsidiaries)	1144.65	
iii) Unsecured loan to Field Force & others against Personal guarantee	3.83	
iv) Loan to Certificate holders	19.93	
v) Loan/deposit to companies (incl. Subsidiaries)	1056.86	
vi) Amount recoverable in cash or kind or for value to be received (unsecured)	281.61	
vii) Amount receivable from subsidiaries	46.94	
viii) Sundry Deposit	7.31	
Sum total		2564.11
Add: Provision made in the current year (FY 2001-02)(Note 1)		195.76
Total		2759.87
Less: Write back of Provision (Note 2)		(139.34)
Closing provision as on 31.03.2002		2620.53

The break up of Rs.2620.53 million is as follows: (Refer schedule – 7 of Audited Accounts, page 36)

Particulars	Rs. In Million	Rs. In million
i) Loan to State Govt./Govt. Company, Undertaking depot. Etc.	2.98	
ii) Loan secured against Shares/Vehicles (incl. subsidiaries)	1227.3	
iii) Consumer durable Loan	0.03	
iv) Unsecured loan to Field force & others against	3.84	

personal guarantee		
v) Loan to Certificate holders	20.93	
vi) Loan/deposit to companies (incl. subsidiaries)	1023.21	
vii) Amount recoverable in Cash or kind or for value to be received (unsecured)	278.3	
viii) Amount receivable from subsidiaries	56.63	
ix) Sundry Deposit	7.31	
TOTAL		2620.53

15. Thus, we note from page 34 of paper book that the provision for NPA of Rs.19,57,60,485/- was debited from the profit and loss account and this was simultaneously reduced from corresponding asset side as follows:

Opening accumulated provision in respect of bad debt	2564.11	(Page 36)
Add: provision created in AY 2001-02	<u>195.76</u>	(Page 2 & 36)
	2759.87	
Less: Write back of provision	<u>139.34</u>	(Page 36, 2 & 26)
Closing accumulated provision	2620.53	

16. The Ld. AR explained that this write back of the provision of Rs.139.34 million was credited to the P&L Account under the head 'Miscellaneous Income' and drew our attention to page 2 and 26 of the paper book to show that total provision for diminution in investment and loans and advances being no longer required is Rs.451.41 million which break up (Diminution in investment is Rs.312.07 million and provision for non-performing assets is Rs.139.34 million and total is Rs.451.41 million) (supra). We note that the closing balance of Rs.2620.53 million was reduced from Schedule 7 - Loans and Advances of the audited accounts in this regard, refer page 36 of paper book. The Provision of Rs.195.76 million created during the year was debited in the Profit and Loss A/c for the year and Provision written back during the year amounting to Rs.139.34 million was credited in the Profit and Loss A/c. This clearly suggests that not only a mere 'Provision for Non-Performing Assets' was created by the assessee by debiting the Profit and Loss account but simultaneously the corresponding amount from 'Loans and Advances' shown on the Asset side of the Balance Sheet was also reduced/adjusted. In other words, the 'Loans and Advances' were recorded in the books as **net of provision**. Thus, in view of the above facts, the said Provision for diminution in non-performing assets would amount to an actual write off of Provision from

the Assets side and therefore would not get attracted by clause (i) of the Explanation to sub-section (2) of section 115JB of the Act as held by the Hon'ble Gujarat High Court in the case of Vodafone Essar (supra) since the Assets side of the Balance Sheet has also been accordingly reduced in the present case of the assessee. Thus, we note that the accumulated closing provision of Rs.2620.53 million was reduced from the current assets, loans and advances which are evident from page 36 of the paper book, which we find to be correct. Thus, the said provision of Rs.195.76 million was an actual write off and, therefore, it does not attract clause (i) of Explanation (1) of section 115JB of the Act. And, therefore, the assessee succeeds and the question of law forwarded by the Hon'ble High Court is answered in favour of assessee and consequently the action of Ld. CIT(A) on this issue is confirmed on the ground discussed supra.

17. In the result, the appeal of revenue is dismissed.

Order is pronounced in the open court on 3rd December, 2020.

Sd/-
(J. Sudhakar Reddy)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 3rd December, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Circle-3, Kolkata.
2. Respondent – M/s. The Peerless General Finance & Investments Co. Ltd.,
3, Esplanade East, Kolkata-700 069.
3. The CIT(A)-1, Kolkata (sent through e-mail)
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Assistant Registrar