

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2024/Bang/2018
Assessment Year: 2014-15

The Karnataka Bank Limited Head Office, Mahaveer Circle Kankanady Mangalore 575 002  <b>PAN NO : AABCT5589K</b>	<b>Vs.</b>	Principal CIT Mangaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri S. Ananthan, A.R.
<b>Respondent by</b>	:	Shri Gopinath C.H., D.R.

<b>Date of Hearing</b>	:	23.09.2021
<b>Date of Pronouncement</b>	:	28.09.2021

**O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the revision order dated 28-03-2018 passed by Ld Pr. CIT, Mangaluru u/s 263 of the Income-tax Act, 1961 [‘the Act’ for short] for assessment year 2014-15. The assessee is challenging the validity of the revision order.

2. The facts relating to the case are stated in brief. The assessment in the hands of the assessee for AY 2014-15 was completed by the AO on 1.3.2016 u/s 143(3) of the Act. On examination of assessment record, the Ld Pr CIT noticed that the assessing officer has made addition u/s 14A of the Act to the tune of

Rs.51.44 crores, but he did not make the addition of same amount while computing book profit u/s 115JB of the Act. The Ld Pr. CIT noticed that the AO has accepted the book profit computed by the assessee, wherein the assessee has not made any addition for expenses relating to exempt income as required under clause (f) of Explanation 1 to sec.115JB of the Act. Hence, the Ld PCIT took the view that the assessment order is erroneous in so far as it is prejudicial to the interests of revenue. Accordingly he initiated revision proceedings u/s 263 of the Act. After hearing the assessee, Ld PCIT set aside the assessment order for the purpose of re-computing book profit u/s 115JB of the Act. Assessee is aggrieved by the said order passed by Ld PCIT.

3. The Ld A.R submitted that the question whether the provisions of sec.14A are applicable to a banking company is debatable issue. He submitted that the Hon'ble Supreme Court has delivered a judgement recently in the case of South Indian Bank Ltd vs. CIT (2021 (9) TMI 566)(SC), wherein the Hon'ble Supreme Court has expressed following view:-

*“24. Another important judgment dealing with Section 14A disallowance which merits consideration is Godrej and Boyce Manufacturing Company Ltd. V. DCIT [(2017) 7 SCC 421. Here the assessee had access to adequate interest free funds to make investments and the issue pertained to disallowance of expenditure incurred to earn dividend income, which was not forming part of total income of the Assessee. Justice Ranjan Gogoi writing the opinion on behalf of the Division Bench observed that for disallowance of expenditure incurred in earning an income, it is a condition precedent that such income should not be includible in total income of assessee. This Court accordingly concluded that for attracting provisions of Section 14A, the proof of fact regarding such expenditure being incurred for earning exempt income is necessary. The relevant portion of Justice Gogoi's judgment reads as follow:*

*“36. .... what cannot be denied is that the requirement for attracting the provisions of Section 14-A (1) of the Act is proof of the fact that the expenditure sought to be disallowed/deducted had actually been incurred in earning the dividend income.....”*

*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 Page 18 of 22 CIT Vs. Nawanshahar Central Cooperative Bank Ltd.<sup>12</sup> 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. The Punjab and Haryana High Court, in the case of Pr. CIT, vs. State Bank of Patiala<sup>13</sup> while adverting to the CBDT Circular, concluded correctly that shares and securities held by a bank are stock in trade, and all income received on such shares and securities must be considered to be business income. That is why Section 14A would not be attracted to such income.”*

Relying on this decision, the Ld A.R submitted that the question of making any disallowance u/s 14A of the Act for a banking company is a debatable issue and hence the impugned assessment order cannot be considered as erroneous and prejudicial to the interests of revenue. He further submitted that the co-ordinate bench of Tribunal has quashed revision order passed on identical set of facts in the case of M/s Robert Bosch Engineering & Business Solutions P Ltd vs. DCIT (2020)(1) TMI 451). The Ld A.R also fairly admitted that another co-ordinate bench has upheld revision proceedings on identical set of facts by modifying the direction given by Ld PCIT in the case of Tanglin Development Ltd (ITA No.1527 (Bang)/2018 dated 29-06-2020. He further submitted that the Delhi Special bench has held in the case of Vireet Investments P Ltd (2017) (82 Taxmann.com 415)(SB) that the disallowance computed u/s 14A cannot be adopted for making addition under clause (f) to Explanation 1 to sec.115JB of the Act. Accordingly he submitted that the direction given by Ld PCIT to make addition of Rs.51.44 crores, being the amount computed u/s 14A of the Act, under clause (f) while computing book profit is contrary to the decision rendered by the Special bench.

4. On the contrary, the Ld D.R supported the order passed by Ld Pr. CIT and submitted that the assessing officer has failed to apply law properly and hence the assessment order was rendered erroneous and prejudicial to the interests of revenue.

5. We heard the parties and perused the record. In *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83, the Hon'ble Supreme Court held that the provision of 263 of the Act cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer and it is only when an order is erroneous that the section will be attracted. The Supreme Court held that *an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous*. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. With regard to the expression "prejudicial to the interests of the Revenue", the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (head note) :

*"The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for ITA No.1527(Bang/2018 example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income- tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."*

6. A perusal of the impugned assessment order would show that the assessing officer has accepted the book profit declared by the assessee u/s 115JB of the Act without examining the same. It is pertinent to note that clause (f) of Explanation 1 to sec.115JB of the Act provides that the expenditure relatable to any income to which

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sec. 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply, should be added to Net profit while computing the book profit. Even though the assessing officer has worked disallowance u/s 14A of the Act while computing total income under normal provisions of the Act, yet he has omitted to examine the applicability of clause (f) of Explanation 1 to sec.115JB. Hence omission to apply provisions of the Act would make the assessment order erroneous and in view of the corresponding tax effect, it is prejudicial to the interests of revenue also.

7. We notice that the Ld Pr CIT has taken the view that the amount disallowed u/s 14A of the Act while computing total income under normal provisions of the Act should be adopted for making addition to Net profit under clause (f) to Explanation 1 to sec. 115JB of the Act. We notice that the view so expressed by Ld Pr. CIT was against the decision rendered by Special bench of Tribunal in the case of Vireet Investments (P) Ltd (supra), wherein it was held that the disallowance computed u/s 14A for the purpose of computing income under normal provisions of the Act cannot be imported for the purpose of addition to be made under clause (f) to Explanation 1 to sec.115JB for computing book profit, i.e., the amount to be added under above said clause has to be computed from the Profit and Loss account independently.

8. Even though the Ld A.R raised the contentions on applicability of provisions of sec.14A, yet we are of the view that the issue agitated here relates to the computation of book profit u/s 115JB of the Act and further the AO did not examine applicability of clause (f) to Explanation 1 to sec. 115JB while framing the assessment order. The same renders the assessment order erroneous and prejudicial to the interests of the revenue.

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9. We have noticed earlier that the Ld PCIT has expressed the view, which is contrary to the decision rendered by the special bench in the case of Vireet Investments P Ltd (supra). Accordingly, we modify the order passed by Ld Pr. CIT and direct the AO to examine applicability of clause (f) to Explanation 1 to sec.115JB of the Act independently without having regard to the provisions of sec.14A of the Act. After affording adequate opportunity of being heard and untrammelled by the view expressed by Ld PCIT, the AO may take appropriate decision in accordance with law.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 28<sup>th</sup> Sept, 2021

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 28<sup>th</sup> Sept, 2021.  
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.**