

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "C", BANGALORE**

**Before Shri Chandra Poojari, AM and Shri George George K, JM**

ITA No.1108/Bang/2019 : Asst.Year 2013-2014

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| M/s.Union Bank of India<br>(Erstwhile Corporation Bank)<br>Central Accounts Department<br>6 <sup>th</sup> Floor, Union Bank Bhavan<br>239 Vidhan Bhavan Marg,<br>Nariman Point, Mumbai – 400021.<br><b>PAN : AAACU0564G.</b> | v. | The Deputy Commissioner of<br>Income-tax, Circle 2(1)<br>Mangalore. |
| (Appellant)  |    | (Respondent)  |

ITA No.170/PAN/2019 : Asst.Year 2013-2014

|   |    |  |
|---|----|--|
| The Deputy Commissioner of<br>Income-tax, Circle 2(1)<br>Mangalore. | v. | M/s.Union Bank of India<br>(Erstwhile Corporation Bank)<br>Mumbai – 400 021. |
| (Appellant)   |    | (Respondent)   |

Assessee by : Sri.S.Ananthan, CA

Revenue by : Sri.Pradeep Kumar, CIT-DR

|                                     |   |
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| <b>Date of Hearing : 16.11.2021</b> | <b>Date of<br/>Pronouncement : 17.11.2021</b> |
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**ORDER**

**Per George George K, JM**

These cross appeals are directed against CIT(A)'s order dated 11.03.2019. The order of the CIT(A) arises out of Dy.CIT's order passed u/s 143(3) r.w.s. 250 of the I.T.Act. The relevant assessment year is 2013-2014. We shall first adjudicate the Revenue's appeal.

**ITA No.170/PAN/2019 (Revenue's appeal)**

2. The Revenue has raised twelve grounds. Grounds one and twelve are general in nature and no specific adjudication is called for, hence, these grounds are dismissed. In grounds 2 to 8, the Department has raised the issue of disallowance u/s 14A of the I.T.Act while computing book profit u/s 115JB

of the I.T.Act. In grounds 9 to 11, the issue raised is regarding addition of NPA provision to the book profit.

We shall adjudicate the above issues as under:

**Disallowance u/s 14A of the I.T.Act while computing book profit u/s 115JB of the I.T.Act (grounds 2 to 8)**

3. The CIT(A) had deleted the addition of Rs.108,80,99,122 for the purpose of computation of book profit u/s 115JB of the I.T.Act, by observing as under:-

*“5.2 The assessing officer (in paragraph 5 of the assessment order) added back the expenditure relatable to exempt income to the profit as per profit and loss account to work out the book profits u/s.115JB of the Act observing that the CIT(A) deleted the addition on the technical ground that the Ad has not recorded his dissatisfaction of the Appellant's claim (that no expenditure was incurred in connection with the earning of exempt income) having regard to the accounts of the assessee. The undersigned vide order dated 26 March 2018 deleted the addition u/s.14A with the following observations:*

*7.4 The submissions of the appellant were considered. The value of tax free investments was Rs.721.50 Cr (As on 31.03.2013). Since the interest free funds far exceeded the tax free securities, no disallowance can be made in respect of interest expenditure as per the Hon'ble Karnataka High Court decision in the case of CIT V Microlabs Ltd (2016) 383ITR 490 (KAR).*

*7.8 The submissions of the appellant were considered. This issue is covered in favour of the appellant by the Hon'ble ITAT, Bangalore decisions in appellant bank's own case in ITA no. 1264 & 1352(B)/2013for the asst. year 2011-12 and ITA No. 206/Pan/2016for AY 2012-13. This issue was involved in the AY 2012-13 also, wherein I have allowed the grounds on the issue. The ITAT upheld my order. Further, I have gone through the Supreme Court and jurisdictional High Court decisions, wherein it was clearly held that, no disallowance could be made under section 14A r. w Rule 8D where the AO failed to record the non-*

*satisfaction of the correctness of the claim. As per section 14A and rule 8D, it is mandatory to record non satisfaction of the appellant's claim by the AD having regard to the accounts of the assessee before proceeding 10 make any disallowance u/r 80. In the absence of such recording of non-satisfaction, the disallowance is untenable.*

*7.9 In this case, the AD has not pointed out any specific reasons having regard to the accounts of the assessee for rejecting the claim of the appellant. It is seen that interest free funds far exceeded the tax exempt securities. Nexus between the interest bearing funds and investments made was not established by the AO. Hence, based on the binding decisions of the Hon'ble Supreme Court, jurisdictional High Court as well as the ITAT, I hereby direct the AO to delete the addition of Rs.108,80,99,122/- made u/s.14A read with Rule 8D. The appeal on this ground is allowed.*

*5.3 The disallowance u/s 14A was deleted by me in the above order. Hence, the AO is directed to delete addition made u/s 115JB for the purpose of computation of book profits also.”*

3.1 Aggrieved, the Revenue has raised this issue before the Tribunal. The learned Departmental Representative has filed a brief written submission essentially supporting the order of the Assessing Officer.

3.2 The learned AR, on the other hand, submitted that the issue in question is squarely covered in favour of the assessee by the judgments of the Hon'ble jurisdictional High Court in the cases referred under:-

- (i) CIT v. Corporation Bank – ITA No.52/2015 – order dated 31.01.2020 for A.Y. 2010-2011 (Karnataka High Court)
- (ii) CIT v. Gokaldas Images Pvt. Ltd. (2020) 429 ITR 526 (Kar.)
- (iii) Sobha Developers Ltd. v. DCIT (2021) 125 taxmann.com 72 (Kar.)

3.3 We have heard rival submissions and perused the material on record. The Hon'ble jurisdictional High Court in the case of CITv. Gokaldas Images Pvt. Ltd. (supra) had held that while computing the book profits, the disallowance u/s 14A of the I.T.Act cannot be added. It was held by the Hon'ble High Court that any disallowance computed u/s 14A of the I.T.Act pertain to the computation of income under the normal provisions of the Act and it cannot be read into the provisions of section 115JB of the I.T.Act. The Hon'ble High Court was considering the following substantial question of law:-

*“Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the disallowance made under section 14A should not be added to the Book Profits of the assessee under section 115JB despite the explicit provisions of Clause (i) of Explanation (1) to section 115JB?”*

3.4 In deciding the above substantial question of law, the Hon'ble High Court has held as follows:-

*“10.....Any disallowance computed under Section 14A of the Act pertain to computation of income under normal provisions of the Act and cannot be read into the provisions of Section 115JB of the Act pertaining to computation of book profits by levy of Minimum Alternate Tax (MAT) and there is no express provision in clause (f) of Explanation 1 to section 115JB of the Act to that extent. For the aforementioned reasons, the third substantial question of law is answered against the revenue and in favour of the assessee.”*

3.5 A similar view was held by the Hon'ble Karnataka High Court in the case of Sobha Developers Ltd. v. DCIT (supra). The relevant finding of the Hon'ble Court read as follows:-

“6. We have considered the submissions made on both sides and have perused the record. Before proceeding further, it is apposite to take note of relevant extract of [Section 115JB](#) of the Act, which reads as under:

*115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of eighteen and one-half per cent.*

*(f) the amount or amounts of expenditure relatable to any income to which section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply; or*

*(i) the amount or amounts set aside as provision for diminution in the value of any asset, if any amount referred to in clauses (a) to (i) is debited to the statement of profit and loss or if any amount referred to in clause (j) is not credited to the statement of profit and loss, and as reduced by,-*

*(i) the amount withdrawn from any reserve or provision (excluding a reserve created before 1<sup>st</sup> day of April, 1997 otherwise than by way of a debit to the statement of profit and loss), if any such amount is credited to the statement of profit and loss;*

*(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.*

7. Thus from perusal of the relevant extract of [Section 115JB](#), it is evident that Sub-Section (1) of [Section 115JB](#) provides the mode of computation of the total income of the assessee and tax payable on the assessee under [Section 115JB](#) of the Act. Sub-Section (5) of [Section 115JB](#) provides that save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee being a company mentioned in this Section. Therefore, any expenditure relatable to earning of income exempt under [Section 10\(2A\)](#) and [Section 10\(35\)](#) of the Act is disallowed under [Section 14A](#) of the Act and is added back to book profit under clause (f) of [Section 115JB](#) of the Act, the same would amount to doing violence with the statutory provision viz., Sub-Section (1) and (5) of [Section 115JB](#) of the Act. It is also pertinent to mention here that the amounts mentioned in clauses (a) to (i) of explanation to [Section 115JB\(2\)](#) are debited to the statement of profit and loss account, then only the

*provisions of Section 115JB would apply. The disallowance under Section 14A of the Act is a notional disallowance and therefore, by taking recourse to Section 14A of the Act, the amount cannot be added back to book profit under clause (f) of Section 115JB of the Act. It is also pertinent to mention here that similar view, which has been taken by this court in Gokaldas Images (P) Ltd. supra was also taken by High Court of Bombay in 'THE COMMISSIONER OF INCOME TAX-8 VS. M/S BENGAL FINANCE & INVESTMENTS PVT. LTD.', I.T.A.NO.337/2013.....”*

3.6 In the light of the above judgments of the Hon'ble High Court, we hold that the CIT(A) is justified in deleting the addition of Rs.108,80,99,122 while computing the book profit u/s 115JB of the I.T.Act. It is ordered accordingly.

**Addition of NPA provision to book profit (grounds 9 to 11)**

4. The assessee had debited a sum of Rs.928,11,93,007 towards provision for NPA in the profit and loss account. The Assessing Officer added the same u/s 115JB of the I.T.Act to arrive at the book profit.

4.1 Aggrieved, the assessee preferred an appeal to the first appellate authority. It was submitted before the CIT(A) that as per item (i) of the Explanation to section 115JB(2) of the I.T.Act, it is only a provision towards diminution in the value of assets to be added back. It is submitted that the provision for Non Performing Assets as per RBI Prudential norms, is not covered by item (i) to the Explanation 1 to section 115JB(2) of the I.T.Act since it is not a provision towards diminution in the value of assets. This provision is reduced from the Gross Advances while preparing the Balance Sheet. Therefore, it has to be treated as write off and not as provision for diminution

in value of asset. In this regard, reliance was placed on the following judicial pronouncements:-

- (i) Vijaya Bank v. CIT (2010) 190 Taxman 257 (SC)
- (ii) CIT v. Yokogawa India Ltd. (2012) 17 taxmann.com 15 (Kar.)
- (iii) CIT v. Kirloskar Systems Ltd. (2013) 40 taxmann.com 124 (Kar.)
- (iv) CIT v. Syndicate Bank 2014 (10) TMI 857 – Kar.
- (v) CIT v. Telco Construction Equipment Co. Ltd. 2016 (6) TMI 651 – Kar.
- (vi) CIT v. Vodafone Essar Gujarat Ltd. (2017) 397 ITR 55 [Guj (FB)]

4.2 The CIT(A), after referring to the judicial pronouncements, cited by the assessee, directed the A.O. to verify and delete the addition made to the book profits u/s 115JB of the I.T.Act to the extent the same is reduced from the gross advances in the balance sheet on the assets side. The relevant finding of the CIT(A), reads as follows:-

*5.10 It is submitted that the appellant bank had debited an amount of Rs.928,11,93,007/- towards Provision for Non Performing Advances and reduced the same from the Gross Advances (asset side) while preparing the Balance Sheet. Therefore, it has to be treated as write off and not as provision for diminution in value of asset. The Appellant bank also furnished the following working in support of the claim that the provision for bad and doubtful debts to the extent of provision debited in the profit and loss account was reduced from the Gross advances in the balance sheet on asset side.*

| Annexure to the written submissions dt. 19.02.2019 before CIT(A) (AY 2013-14) |  |                       |
|---|--|-----------------------|
| Corporation Bank  |  |                       |
| Working of Net Advances   |  |                       |
| Advances as on 31.03.2013   |  |                       |
| Sr. No.   | Particulars  | Amount (Rs. in Crore) |
| 1   | Gross advances   | 121,024.45            |
| 2   | Less: Prudential Written Off Balance (as computed below)         | 1,670.45              |
| 3   | Less: Provision and write offs (as computed below)               | 575.74                |
| 4   | Less: ECGC/DICGC Claim   | 61.61                 |
|   | <b>Net advances as per Balance Sheet (Pg. No. 120 &amp; 127)</b> | <b>118,716.65</b>     |

  

| Movement of Prudential Write Offs |  |                       |
|-----------------------------------|--|-----------------------|
| Sr. No.                           | Particulars  | Amount (Rs. in Crore) |
| 1                                 | Opening Balance  | 1,231.52              |
| 2                                 | Add: PWO made during the year                          | 649.84                |
| 3                                 | Less : Written off by Branches                         | 64.87                 |
| 4                                 | Less : Recovery made from PWO accounts                 | 146.04                |
|                                   | <b>Closing balance of PWO as per item 2 of table 1</b> | <b>1,670.45</b>       |

  

| Movement of Provision and Write Offs |  |                       |
|--------------------------------------|--|-----------------------|
| Sr. No.                              | Particulars  | Amount (In Rs. crore) |
| 1                                    | Opening Balance  | 356.29                |
| 2                                    | Add: Provision & write off made during the year                            | 928.12                |
| 3                                    | Less: Provision used for write off   | 708.67                |
|                                      | <b>Closing balance of Provision and Write Off as per item 3 of table 1</b> | <b>575.74</b>         |

5.11 From the above working, it is found that the provision of Rs.928.12 crores was debited to the P& L account and also reduced from the Gross advances in the balance sheet on the asset side. In view of the various judicial decisions discussed above, the assessing officer is hereby directed to verify and delete the addition made to the book profit u/s 115JB.”

4.3 The Revenue being aggrieved, has raised this issue before the Tribunal. The learned Departmental Representative supported the order of the Assessing Officer.

4.4 The learned AR submitted that the issue in question is covered in favour of the assessee by the following judicial pronouncements:-

- (i) *CIT v. Telco Construction Equipment Co. Ltd. (2016) (6) TMI 651 (Karnataka HC)*

- (ii) *CIT v. Vodafone Essar Gujarat Ltd. (2017) 397 ITR 55 (Guj.FB)*

4.5 We have heard rival submissions and perused the material on record. The addition of NPA provision to the book profit whether it is permissible or not is covered in favour of the assessee by following judicial pronouncements:-

- (i) *CIT v. Telco Construction Equipment Co. Ltd. (2016) (6) TMI 651 (Karnataka HC)*  
(ii) *CIT v. Vodafone Essar Gujarat Ltd. (2017) 397 ITR 55 (Guj.FB)*  
(iii) *Vijaya Bank v. CIT (2010) 190 Taxman 257 (SC)*  
(iv) *CIT v. Yokogawa India Ltd. (2012) 17 taxmann.com 15 (Kar.)*  
(v) *CIT v. Kirloskar Systems Ltd. (2013) 40 taxmann.com 124 (Kar.)*  
(vi) *CIT v. Syndicate Bank 2014 (10) TMI 857 – Kar.*

4.6 The CIT(A) has extracted the relevant portion of above judicial pronouncements in the impugned order, hence the same is not reproduced herein. The assessee bank had debited an amount of Rs.928,11,93,007 towards provision for Non Performing Advances and reduced the same from the gross advances (assets side) while preparing the balance sheet. Therefore, it has been treated as write off and not as provision for diminution in value of asset. The assessee bank had furnished the working in support of its claim that the provision for bad doubtful debts to the extent of provisions debited in the profit and loss account was reduced from the gross advances in the balance sheet on assets side. The CIT(A) has only directed the A.O. to verify and delete the addition made to the book profit to the extent the same is reduced from the gross advances in the balance sheet on the assets

side. Therefore, we see no infirmity in the order of the CIT(A) and we uphold the same. It is ordered accordingly.

4.7 In the result, the appeal filed by the Revenue is dismissed.

**ITA No.1108/Bang/2019 (Assessee's appeal)**

5. The brief facts of the case are as follows:-

The assessee is a nationalized bank. The assessment u/s 143(3) was completed vide order dated 13.01.2015. In the original assessment order completed vide order dated 13.01.2015, the A.O. made various disallowances and computed income under the regular provisions of the Act. The A.O. also computed book profit u/s 115JB of the I.T.Act by making certain adjustments. Against the said assessment order, the assessee preferred an appeal before the first appellate authority. The appeal was disposed of by the first appellate authority vide order dated 26.03.2018. The Assessing Officer passed order on 30.05.2015 to give effect to the order of the first appellate authority. In the order giving effect to the order of the first appellate authority (order dated 30.05.2018) the Assessing Officer recomputed the book profits u/s 115JB of the I.T.Act by making various additions, which according to the assessee was not part of either the original assessment order nor the appellate order. The Assessing Officer added the following to the book profits u/s 115JB of the I.T.Act while giving effect to the order of the first appellate authority:-

| Sl. No. | Nature of addition              | Amount        |
|---------|---------------------------------|---------------|
| 1.      | Disallowance u/s 14A r.w.s. 8D  | 108,80,99,122 |
| 2.      | Provision for NPA               | 928,11,93,007 |
| 3.      | Net depreciation on investments | 52,57,75,606  |

5.1 Being aggrieved by the order of A.O. dated 30.05.2018, the assessee filed an appeal before the first appellate authority and the same was disposed of by the impugned order dated 11.03.2019.

5.2 Aggrieved by the order of the first appellate authority, the assessee has raised following grounds:-

*“1. The order of the learned Commissioner of Income Tax (Appeals) is bad in law and against the facts of the case.*

*1.The learned Commissioner of Income Tax (Appeals) erred in not adjudicating the ground questioning the validity of the learned Assessing Officer in making various addition going beyond his jurisdiction.*

*2.1. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the additions made by the learned Assessing Officer are all new issues and not emanating out of the original Assessment proceedings nor the appellate proceeding.*

*3. The learned Commissioner of Income Tax (Appeals) erred in not adjudicating the ground relating to the addition of net depreciation on investments amounting to Rs.52,57,75,606/-.*

*3.1. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the net depreciation on investments debited to Profit & Loss Account while computing the Book Profit u/s 115JB of the Income Tax Act, 1961.*

*For all these and other grounds which may be urged at the time of the hearing of this appeal, the appellant prays that its appeal be allowed.”*

5.3 The learned AR submitted that the assessee has raised technical grounds before the CIT(A) that the Assessing Officer has erred in making various additions u/s 115JB of the I.T.Act, which were not the subject matter of original assessment nor the appellate order dated 26.03.2018 (the first appellate order) thereby exceeding his jurisdiction. Further, the learned AR submitted that on merits the assessee has challenged the addition to the book profits relating to the addition of net depreciation of Rs.52,57,75,606. It was submitted that both the technical ground and the ground raised on merits were not adjudicated by the CIT(A). Therefore, it was prayed that the issues raised in ground 2 and ground 3 may be restored to the files of the CIT(A) for him to adjudicate the same.

5.4 The learned DR supported the orders of the Income Tax Authorities.

5.5 We have heard rival submissions and perused the material on record. In the order giving effect dated 30.05.2018 passed by the A.O. u/s 143(3) r.w.s. 250 of the I.T.Act, the A.O. has recomputed the book profit u/s 115JB of the I.T.Act by making various additions, which were not part of either the original assessment order nor the first appellate order dated 26.03.2018. Therefore, the assessee had challenged the action of the Assessing Officer before the CIT(A), stating that the A.O. had exceeded his jurisdiction while giving effect to the order of the CIT(A). The assessee has also raised grounds on merits with regard to addition of net depreciation on investments

amounting to Rs.52,57,75,606. We noticed that these grounds taken by the assessee before the CIT(A) has not been adjudicated in the impugned order dated 11.03.2019. Therefore, we restore these issues to the files of the CIT(A). The CIT(A) is directed to adjudicate the issues raised in grounds 2 and 3 before the Tribunal [ground 2, 2.1 and 3.5 before the CIT(A)]. The CIT(A) is directed to afford reasonable opportunity of hearing to the assessee. It is ordered accordingly.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes and the appeal filed by the Revenue is dismissed.

Order pronounced on this 17<sup>th</sup> day of November, 2021.

**Sd/-**  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 17<sup>th</sup> November, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Bengaluru.
4. The Pr.CIT-3, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore