

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.1626/Mum/2012  
(Assessment Year: 2006-07)**

**ITA No.5879/Mum/2019  
(Assessment Year: 2006-07)**

Mukund Limited, Bajaj Bhavan, 3 <sup>rd</sup> Floor, 226, Nariman Point, Mumbai – 400021.	<b>बनाम/ Vs.</b>	DCIT – 3(2), Aayakar Bhavan, M.K. Road, New Marine Lines, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACM5008R		
(□ पीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

□ पीलार्थी ओर से/ Appellant by :	Ms. Vasanti Patel. AR
प्रत्यर्थी की ओर से/Respondent by :	Mr. S.N. Kabra.DR

सुनवाई की तारीख / Date of Hearing	21/01/2022
घोषणा की तारीख /Date of Pronouncement	10 /03/2022

**आदेश / ORDER**

**PER PAVAN KUMAR GADALE - JM:**

These are the appeals filed by the assessee against the separate orders of the CIT-(4) Mumbai, passed u/s 143(3) and 250 of the Income Tax Act, 1961 and the order giving effect(OGE) appeal order of CIT(A)-8.

Since these appeals have similar and inter linked issues, hence are clubbed, heard and consolidated order is passed

For the sake of convenience, we shall take up ITA No. 1626/Mum/2012 as a lead case and facts narrated therein. The assessee has raised the following grounds of appeal:

*“1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Deputy Commissioner of Income-tax in computing the disallowance under section 14A of the Income Tax Act, 1961 (‘Act’) in respect of expenditure incurred for earning tax-free income as per Rule 8D inserted by the Income-tax (Fifth Amendment) Rules, 2008.*

*2. (a) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Deputy Commissioner of Income-tax in making an addition amounting to Rs 4,06,19,842 in respect of expected loss on assets retired from active use while computing the book profit as per section 115JB of the Act.*

*(b) The Commissioner of Income-tax (Appeals) erred in not appreciating the fact that the expected loss on assets retired from active use debited for the Profit and Loss Account in accordance with Accounting Standard 10 — Accounting for Fixed Assets is not a provision for diminution in value of asset but the estimated loss in respect of the assets held for disposal.*

*The appellant hereby reserves the right to add to, alter or amplify the above grounds of appeal, at any time before or at, the time of appeal, so as to enable the Honourable Tribunal to decide the appeal in accordance with law.*

2. The Brief facts of the case are that, the assessee company is engaged in manufacturing, processing and trading of steel products, industrial machinery, road construction activities, rendering of technical services. The assessee has filed return of income for AY 2006-07 electronically on 10.11.2006 disclosing a total income of Rs. Nil. Subsequently, the assessee has filed a revised

return of income on 26.03.2008 with a total income of Rs.Nil under normal provisions of Income Tax Act and the Book profits under provisions of section 115JB of the Act of Rs.1,20,56,19,876/-.The return of income was processed under section 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice under section 143(2) and 143(1) of the Act are issued. In compliance, the ld. AR of the assessee submitted the details and the case was discussed. The AO on perusal of finance statements found that the assessee has international transactions with its Associated Enterprises (AE) and therefore, a reference was made to the Transfer Pricing Officer (T.P.O), whereas the Addl. CIT-TP-2() Mumbai has passed the order U/sec 92CA(3) of the Act dated 06.10.2009 accepting the value of international transactions entered of the assessee with A.E. In respect of the corporate issues, the AO found that the assessee has received a dividend income of Rs.6,15,147/- during the F.Y. 2005-06 and was claimed exempt U/sec 10(34) of the Act. Whereas the assessee has disallowed or attributed@ 2.5% of the dividend income which worked out to Rs. 15,379/- as expenditure relatable to earning exempted income.The AO found that the provisions of section 14A r.w.r. 8D of the I T Rules shall be applicable. The Ld.AR of the assessee submitted that the provisions of Rule 8D was brought into effect from 24.03.2008 and is applied prospectively. The AO has relied on the workings as per the Special Bench decision in the case of

M/s Daga Capital Management P. Ltd. and observed that the earlier decisions of CIT(A) in calculating the disallowance under section 14A of the Act will not be applicable and the expenditure including relating interest relating to the investments shall be disallowed U/sec36(1)(iii) of the Act. The A.O. has worked out disallowance u/sec14A r.w.r 8D(2)(ii)&(iii) of Rs.5,18,01,266/-. Further the A.O. in computing the book profit U/sec115JB of the Act is of the opinion that certain disallowances has to adopted in the calculation of book profit i.e.

- (i) Diminution in the value of investments.
- (ii) Provisions for doubtful debts.
- (iii) Expected loss on assets.

The assessee has filed the explanations in letter dated 09.11.2019 mentioning that the provisions of Sec 115JB amended by Finance Act No.(2) 2009 has retrospective effect from 1 April 2001 and observed at page no.4 of the order as under:

*“It can be seen from the statement that one of the machines has been sold in the AY 2007-08 at a price lower than the fair’ market value determined as per the valuation report and further loss has been accounted.*

*In this connection, we wish to submit that the expected loss on assets retired Tom active use has actually been written off in the accounts. Accordingly, the said oss cannot be treated as amount set aside for provision for diminution in value of any asset - and ought not to be added back while computing the book profits as per section 115JB.”*

The assessee company agreed for addition of Rs.18,48,90,000/- and Rs.40,72,59,118/- on a/c. of provisions for diminution in the value of investments and provision for doubtful debts respectively and hence there is no need for any further discussion on these issues. The arguments of AR. in respect of expected loss of Rs.4,06,19,984/- are not acceptable. The expected loss of Rs.4,06,19,984/- is nothing but provisions on a/c. of impairment of assets and same is within the ambit of the amended provision of section 115JB of the Act. This loss has not accrued to companies because the asset has not been sold by the company during the previous year. The assessee has not entered into any contract for sale of these assets and therefore, it cannot be said that the loss has actually accrued to the company. Further, this provision of Rs.4,06,19,984/- has been added by the company while computing its taxable income under normal provisions of the Act. In view of this fact and circumstances of the case, amount of Rs. 4,06,19,984/- is added to the income u/s.115JB of the Income Tax Act, 1961. The penalty proceedings u/s.271(1)(c) of the Act are initiated in respect of amount of Rs. 4,06,19,984/- not included by the company for computation of its income u/s.115JB of the Act.”

3. On the third disputed issue that, certain receipts does not pertain to assessee of Rs.14,26,149/-. The A.O. was not satisfied with the explanations and made addition of difference in the data as per AIR and the assessee books of account. Finally, the AO has calculated the profit & gains under the head “Income from Business & Profession” after setting of the loss as Rs. Nil and whereas the Book profits as per section 115JB of the Act are determined as under:

“Book Profit as per the provisions of section 115JB:

<u>Particulars</u>	<u>Amount (Rs.)</u>
Profit after tax as per profit and loss account	Rs.1,03,42,30,772/-
Add: Provisions for taxation	Rs. 17,19,88,874/-
Provisions for diminution-	

-in the value of investments	Rs. 18,48,90,000/-
Provisions of doubtful debts	Rs. <u>40,72,59,118/-</u>
	1,79,83,68,764/-
Less: Dividend from domestic- -companies	<u>6,15,147/-</u>
	1,79,77,53,617/-
Add: Expenses relatable to dividend- -income (as per para-1 above)	5,18,01,266/-
Add: Expected loss on assets as per para-2 as discussed above.	<u>4,06,19,984/-</u>
Book profit u/s 115JB	<u>1,89,01,74,827/-</u>

And the A.O. has passed the order under section 143(3) of the Act dated 16.11.2009.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). The CIT(A) considered the grounds of appeal, submissions of the assessee, findings in the scrutiny assessment and in respect of disallowance of expenditure under section 14A r.w.r 8D(2) of the I T rules has observed as under:

*“7. I have considered the facts of the case and submissions of the assessee. A similar disallowance was made in A.Y. 02-03 where no disallowance was made on account of interest expense, whereas, disallowance on account of administrative expenses was made as per Rule 8D by CIT(A), whereas, in A.Y. 03-04, 04-05 and 05-06 assessee offered 2.5% of the dividend income on the basis of earlier year orders, whereas, for A.Y. 06-07 the A.O. has applied Rule 8D and also made disallowance on account of interest expenditure. Whereas, for A.Y. 07-08 the assessee has submitted that the A.O. has not made any disallowance on account of interest expenditure by holding as follows:*

*“The assessee has vide reply dated 09.12.2010, submitted the details of interest expenses incurred. As per the details submitted, a substantial part of the term loans have been utilized towards investments in fixed assets. Further, the assessee has contended that as against the interest expenses on account of cash credit, debenture, working capital loans the assessee is having*

interest income higher than the expenses made. The assessee's contention is considered. In view of the fact that there is no direct correlation between the loans taken and investments made, disallowance of these interest expenses is not being made. However, an indirect correlation between the interest paid and the earning of dividend income and investments made cannot be ruled out.

Thus, the disallowance u/s. 14A read with Rule 8D(iii), being .5% of the average value of investments is being made in view of the fact that a certain portion of expenses incurred including financial expenses are attributable to the earning of dividend income. It is submitted that the assessee is having various forms of income which have been earned from a common pool of human and financial resources. As discussed above, the expenses attributable to the earning of dividend income are computed as under:

Rule 8D(2)(i)	: Rs. Nil.
Rule 8D(2)(ii)	: Rs. Nil
Rule 8D(2)(iii)	: Rs. 62,03,420/-

Thus, the total disallowance u/s. 14A works out to be Rs.62,03,420/-. This in my view is a reasonable disallowance as stipulated in Rule 8D of the I.T. Rules.”

In the case of *Godrej & Boyce Mfg. Co. Ltd. vs. CIT 328 ITR 81*, Hon'ble Bombay High Court has held that Rule 8D is applicable from A.Y. 08-09 onwards, whereas, for earlier years a reasonable disallowance has to be made. Therefore, in the case of the assessee a reasonable disallowance is to be made on account of exempt income. In my opinion, the reasonable disallowance can correctly be calculated as per Rule 8D only in the facts and circumstances of the case. Therefore, AO is directed to make calculation as per Rule 8D. But while making calculation, the interest directly relating to other activities other than the investment activity is to be excluded and assessee to file the required details. Whereas, disallowable expenditure on account of administrative expenses is to be calculated as per Rule 8D only. In result, the ground of appeal is partly allowed.”

The CIT(A) has issued the directions to the A.O. as discussed in the above paragraphs and partly allowed the ground of appeal.

5. Whereas, in respect of other grounds of appeal, were the addition in respect of expected loss on assets retired from Active use, while computing Book Profits as per section 115JB of the Act of Rs. 4,06,19,842/-. The CIT(A) has considered the submissions of the assessee and observed at Page 8 Para 10 of the order as under:

*“10. I have considered the facts of the case and submissions of the assessee. There is no dispute that the provisions have to be added back while computing the book-profit u/s. 115JB. Clause (i) of explanation 1 to sub-section (2) of section 115JB provides that “the amount or amounts set aside as per provision for diminution in the value of any asset” are required to be added to the book-profit. The only dispute is whether the expected loss on the assets retired from active use and held for disposal is a provision or not. In case of stock in trade it is the accepted accounting principle that closing stock is to be valued at cost or market price whichever is less, whereas no such principle is recognized as far as the fixed assets are concerned and they are separately subject to depreciation and other provisions and, therefore, the claim of the assessee does not appear to have any merit. Whereas, assessee has claimed that it is not a provision against any asset but it is a write off of the asset and secondly it is also claimed that when the asset is withdrawn from use and held for disposal only then it is treated like any other current asset and therefore, a write off of the same is allowable. But the asset has not yet been disposed off. It is very much in the possession of the assessee and it is shown in the Balance-Sheet also at whatever value and, therefore, any loss which is expected on its disposal will remain a provision only till the asset is actually disposed off. Therefore, the action of the A.O. is upheld and the ground of appeal is rejected.”*

6. In respect of other grounds of appeal, the CIT(A) has granted the partial relief and partly allowed the assessee's appeal. Aggrieved by the order, the assessee has filed the appeal before the Honble Tribunal.

7. At the time of hearing, the ld. AR submitted that the CIT(A) has erred in confirming the action of the A.O in computing disallowance U/sec14A of the Act in respect of expenditure incurred for earning tax free income. Whereas the Rule 8D was inserted in finance Act 2008 cannot be applied for earlier asst Years prior to A.Y.2008-09 as the amendment is effective from 24 march 2008. On the second ground of appeal, the Ld.AR emphasized that the CIT(A) has erred in overlooking the facts that the expected loss on assets retired from active use was claimed in the Profit & Loss Account as per the Accounting Standard-10 of ICAI and the same cannot be added while computing the book profits U/sec115 JB of the Act and supported the submissions with the judicial decisions and Paper Book. Contra, the Ld.DR relied on the order of the CIT(A).

8. We have heard the rival submissions and perused the material on record. On the first disputed issue with respect to disallowance under section 14A r.w.r. 8D, the ld. AR's contentions are that the CIT(A) has erred in not considering the facts that the expenditure incurred for earning tax free income disallowance under Rule 8D(2) of the I T rules was affectively inserted in Finance Act, 2008 and the provisions are applicable from AY 2008-09. Whereas the current assessment year is prior to the amendment and the decisions of disallowance adopted for earlier Assessement year are equally applicable. The

Ld.AR referred to the provisions of the Act, rules and judicial decisions. We find the Revenue has accepted the calculations of the assessee and worked out disallowance invoking @ 2.5% of the dividend/exempted income in the earlier asst years. Whereas, We find for AY 2002-03, the A.O. s observations in order dated 24-03-2005 at page 8 are as under:

“4. **Expenditure attributable to the exempted income**

During the course of assessment proceedings, it was observed from the P&L account and as well as statement of income that assessee company has earned dividend of Rs.1,42,06,276/by way of dividend from Indian companies for which exemption w/s. 10(33) of the I.T. Act is claimed. The assessee was asked vide question no.22 of letter dt. 9.11.2004 as to why the expenditure should not be attributed to earning of this exempted income to which assessee's representative vide letter dated 1-12-2004 has submitted as under.

*“In respect of expenses incurred for earning exempt income, our clients submit that there are no fresh investments during the year.*

*Further, the investments made by our clients in earlier year have been made out of retained earnings and not out of borrowed funds. Accordingly, no expenditure is attributable towards earning exempt income and no disallowance ought to be made under section 14A.*

*Without prejudice to the above submissions and in the alternative, it is submitted that in case any disallowance is made under section 14A, the same*

*ought to be restricted to 1.5% of the dividend income as was done in assessment year 2001-02”*

I have carefully considered ‘the submissions of the assessee company. Even if it is accepted that the investment in the shares has been made in the past out of own earnings. Even then, there is no denial of fact that the share investment is very technical and skillful job which requires very experience and professional approach and especially when the dividend of such magnitude is earned. It is hard to believe that no expenditure has been incurred for earning this income. In the absence of any direct nexus of expenditure incurred for earning of this income I proceed to estimate 2.5% of dividend income earned Rs.1,42,06,276/- as a expenditure incurred in this regard. Accordingly, provisions of section 14A are invoked to disallow expenditure incurred for earning of this exempted income. Accordingly an amount of Rs.3,55,156/- stands disallowed on this account.”

9. The Ld.AR submitted that for the subsequent Assessement years till A.Y.2005-06 the Revenue has accepted the method of disallowance estimated based on the dividend income earned. We find the amendment in finance Act 2008 inserting Rule 8D(2) is effective from 24 march 2008 and is prospectively applied and rely on the decision of the jurisdictional Honble High Court Of

Bombay in Godrej & Boyce Mfg Co Ltd Vs CIT (328 ITR 81) We considering the facts, circumstances, judicial decisions and provisions of the Law are of the opinion that the consistency of methodology should be maintained and the revenue has accepted the system of disallowance based on the percentage in the earlier years. Accordingly, we set aside the order of the CIT(A) on this ground of appeal and direct the Assessing officer to consider the method adopted for earlier years as discussed above and allow the ground of appeal in favour of the assessee.

10. On the second ground of appeal, with respect to additions made in calculating the book profit under section 115JB of the Act, we find that the provisions has schedule code of itself and changes are not permitted. The Ld.AR referred to profit and loss account at page 16 of the Paper book, where the assessee has disclosed the exceptional items with note B(16)-(x) Expected loss on assets retired from active use was claimed by the assessee. The Ld.AR has demonstrated the details of Loss Written Off on Assets which were retired from active use at page 14 of the paper book. The Ld. AR referred to page 20 of the notes on accounts and explained the reasons of exceptional items. Further the CIT(A) has not considered the provisions and Accounting Standard-10 of ICAI applied by the assessee. The assessee has made submissions before the lower authorities on the disputed

issue. We find that on the similar issue as discussed, The Hon'ble High Court of Gujarat in PCIT V/s Torrent (P.) Ltd. (2019) 108 taxmann.com 375(Gujarat) has held as under:

, "It may be germane to refer to Accounting Standard (AS) 13 which provides for 'Accounting for Investments' and deals with accounting for investments in the financial statements of enterprises and related disclosure requirements. Accounting Standard-13 is in three parts, introduction: comprised of paragraph 1-3, Explanation comprised of paragraphs 4-25 and Main Principles comprised of paragraphs 26-35. Under the Explanation Part of Accounting Standard 13, paragraphs 14 to 19 fall under the heading 'Carrying Amount of Investments'. Paragraphs 14 to 16 thereunder deal with current investments, whereas paragraphs 17 to 19 deal with long-term investments. Paragraph 17, inter alia, says that long-term investments are usually carried at cost. However, when there is a decline, other than temporary, in the value of a long-term investment, the carrying amount is reduced to recognize the decline. Paragraph 18 says that long-term investments are usually of individual importance to the investing enterprise. The carrying amount of long-term investments is, therefore, determined on an individual investment basis. Paragraph 19 says that where there is a decline, other than temporary, in the carrying

amounts of long-term investments, the resultant deduction in the carrying amount is charged to the profit and loss statement. The reduction in the carrying amount is reversed when there is a rise in the value of the investment, or if the reasons for the reduction no longer exist. [Para 13]

In terms of the accounting standards, in view of the decline in the value of the provisions created in the Current year the carrying amount of such investments has been reduced and in case of provisions where there was a rise in the value, the provisions are written back and the net amount of provision has been debited to the profit and loss account. Thus, insofar as the provision for diminution of value of investment is concerned, the same has actually been reduced from the asset side of the balance sheet and, therefore, is in the nature of a write off. Under the circumstances, the amount in question though came the nomenclature of provision for diminution of value of investment, having been actually written off, cannot be added to the book profit under section 115JB(2)(i) of the Act. [Para 21]

In the light of the above discussion, no infirmity can be found in the view adopted by the Tribunal so as to warrant interference. It is hereby held that the Tribunal was justified in deleting the disallowance of provision for diminution in value of investment while

computing book profit under section 115JB. The appeal, therefore, fails and is, accordingly, dismissed. [Para 24]”

11. We find in the case of CIT V/s Kirloskar Systems Ltd. (2013) 40 taxmann.com 124 (Karnataka HC) has held as under:

“1. This appeal is preferred by the Revenue raising the following substantial questions of law:-

*"a. Whether the Tribunal was correct in holding that provision for diminution in value of assets debited to P and L account is not required to be increased as per Clause (i) of Explanation-1 to Section 115JB of the Act to compute book profit under Section 115JB of the Act when the assessee has debited diminution in value of assets as a provision to the P and L account?*

*b. Whether the Tribunal was correct in holding that the provision for doubtful debts debited to P and L Account is not required to be increased as per Clause © of Explanation-1 to Section 115JB of the Act to compute book profit under section 115JB of the Act when the assessee has debited provision towards doubtful debts to the P and L account?*

*c. Whether the Tribunal was correct in holding that the provision made towards gratuity and leave encashment were not contingent liabilities when the assessee had not produce any evidence to substantiate that they were ascertained liabilities and recorded a perverse finding ?*

*d. Whether the Tribunal was correct in holding that interest u/s.234B and 234C of the Act cannot be levied for default in payment of advance tax in the case wherein Section 115JB of the Act is invoked?*

*e. Whether the Tribunal was correct in holding that though the assessee assessed u/s. 115JB of the Act is liable for payment of advance tax however not liable for payment of interest u/s.234B and 234C of the Act?"*

2. The Apex Court in the case of *Vijaya Bank v. CIT* [2010] 323 ITR 166/190 Taxman 257 (SC) has held that the assessee is entitled to the benefit of rejection under Section 36(1)(vii) of the Income Tax Act, 1961 (for short 'the Act) when there is an actual write off by the assessee in its book. This Court in the case of *CIT v. Yokogawa India Ltd.* (2012) 204 Taxman 305/17 taxmann.com 15 (Kar.) has held adjustment of provision for bad and doubtful debts is reduced from the loans and advances or the debtors from the assets side of the balance sheet, the Explanation to Section 115JA and JB is not at all attracted. Therefore, after the Explanation the assessee is now required not only to debit the P and L account 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. This Court in the case of *CIT v. Jupiter Bio-Science Ltd.* (2013) 352 ITR 113/(2011] 202 Taxman 80/13 taxmann.com 161 (Kar,) has held the assessee is liable to pay advance tax as per the amended provisions of Section 115JB of the Act for the relevant period. However, he is not liable to pay interest on the amount due as per the amended provisions. However, he has not paid the advance tax as per the provisions existing prior to the amendment. Hence, he is liable to pay interest on the said amount deducting the difference of the tax paid. The Apex Court in the case of *Bharat Earth Movers Vv. CIT* (2000) 245 ITR 428/1)2 Taxman 61] (SC) has held that an assessee who is maintaining the accounts on mercantile system, a liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted principles of commercial practice and accountancy. It is not as if such deduction is permissible only in case of amounts actually expended or paid. The liability would be an accrued liability and would not convert into a conditional one merely because the liability was to be discharged at a future date, Therefore for that, reason it was held that the gratuity payable and encashment of earned leave is not a contingent liability and”

12. We find that the Hon'ble Tribunal *Hitech Home&Life Solutions Ind Pvt Ltd Vs DCIT in ITA No.*

3363/Ahd./2015 dated 02.11.2018 has dealt on this issue and observed under:

“8. We have heard the rival contentions and perused the materials available on record. On perusal of the fixed assets schedule of the assessee placed on page 34 of the paper book we note that the provision for loss on assets held for disposal was actually written off in the block of assets and accordingly resulting reduction in the assets side of the balance sheet. Thus, it is clear that the provision as discussed above was not shown as liability in the balance sheet of the assessee. Thus, in our considered view, there cannot be any addition on account of provision made by the assessee for the diminution in the value of assets in its books of accounts. In this regard, we find support and guidance from the judgment of Hon’ble Supreme Court in the case of Vijaya Bank vs. CIT reported in 323 ITR 166, wherein it was held 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 1- 4-1989, 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 1-4-1989, 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 assesseees 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 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 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 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 provisions for impugned bad debt. This aspect is lost sight of by the High Court in its impugned judgment. 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 its books, as indicated above."*

At the time of hearing Id. DR has not brought anything on record contrary to the arguments advanced by the Id. Counsel for the assessee. Therefore, we have no alternate except to reverse the order of authorities below. Hence, after having reliance on the judgment of Hon'ble Supreme Court in the case of Vijaya Bank (supra) we hold that the provisions has actually been written off by the assessee for diminution in the value of assets. Therefore, no addition under clause-(i) to Section 115JB of the Act was warranted. Hence, we set aside the order of Id. CIT(A) and direct the AO to delete the same. Hence, ground of appeal of the assessee is allowed.

13. We considering the facts, circumstances, provisions of law, ratio of decisions of Honble High Court and Honable Tribunal are of the opinion that the addition of expected loss on assets retired from active use, while calculating book profit U/sec115JB of the Act sustained by the CIT(A) is not tenable. Accordingly, we direct the Assessing officer to recompute the Book Profits U/sec115JB of the Act excluding the addition of expected loss on assets as discussed and allow the ground of appeal of the assessee.

**14. ITA No. 5879/Mum/2019.**

The appeal is filed by the assessee against the CIT(A) order based on the Order giving effect (OGE) dated 20-12-2011. The grounds of appeal raised in this appeal pertain to provisions of sec 14A r.w.r 8D(2) of IT Rules. Since we have decided in the ITA no 1626/M/2012 in above paragraph 9 relying on the jurisdictional High court decision that the amendment inserted Rule 8 D (2) in Finance Act 2008 is prospectively applicable. Therefore the method adopted by the assessee and accepted by the revenue prior to A.Y.2006-07 shall be the basis for disallowance under sec 14A of the Act. Accordingly, the appeal becomes infractus and is dismissed.

In the result, the appeal filed by the assessee ITA no 5879/M/2019 is dismissed and ITA.no1626/M/2012 is partly allowed.

Order pronounced in the open court on 10.03.2022.

Sd/-  
(S. RIFAUR RAHMAN)  
**ACCOUNTANT MEMBER**  
Mumbai, Dated 10/03/2022  
SK, Sr. PS

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai