

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1253/Mum/2022
(A.Y. 2017-18)**

Bank of Baroda (w.r.t E-Dena Bank) Baroda Corporate Centre, 2 nd Floor, Corp A/c and Tax Dept. C-26, G-Block, Bandra Kurla Complex, Bandra East, Mumbai – 400051	Vs.	The Pr. Commissioner of Income Tax-2, Room No. 344, 3 rd Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACB1534F		
Appellant	..	Respondent

Appellant by :	S. Ananthan & Mrs. Lalitha
Respondent by :	Dr. Mahesh Akhade

Date of Hearing	08.08.2022
Date of Pronouncement	15.09.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the Id. Pr. CIT-2, Mumbai which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961, for A.Y. 2017-18. The assessee has raised the following grounds before us:

- “1. The learned Principal Commissioner of Income-tax (Pr CIT) erred in passing an order us 263 and directing the Assessing Officer to modify the order

dated 26-12-2019 passed u/s 143(3) of Income Tax Act, 1961 Your appellants submit that the order of the Pr. CIT is illegal, bad in law and void and the same ought to be quashed.

- 1.1. The learned Pr CIT erred in holding that there was a lack of enquiry under Explanation 2 to section 263 of the Income Tax Act, 1961.*
- 1.2. The appellants submit that the order of the AO is not erroneous and is not prejudicial to the interest of the Revenue. Your appellants therefore submit that the order of the Pr. CIT be quashed.*
- 1.3. The learned Pr. CIT failed to appreciate the fact that in respect of all the issues, the learned Assessing Officer has adopted one of the possible views.*
- 1.4. Without prejudice to the above, the learned Pr. CIT erred in remanding the matter for further verification.*
- 2. The learned Pr. CIT erred in holding that allowing the deduction of Amortization of Premium paid on HTM Securities without due verification has made the order erroneous.*
 - 2.1. The learned Pr. CIT failed to appreciate the fact that the learned Assessing Officer allowed the claim after raising specific queries.*
- 3. The learned Pr. CIT erred in holding that the Assessment order is erroneous on the issue of addition of write off bad debts to the Book Profits computed u/s without due verification, which has rendered the Asst order erroneous.*
 - 3.1 The learned Pr. CIT failed to appreciate the fact that the learned Assessing Officer has adopted one of the possible views.*
 - 3.2. Without prejudice to the above, the learned Pr. CIT failed to appreciate the fact that the provisions of section 115JB are not applicable to Nationalised Banks.*

Your appellants further reserve the rights to add, amend or alter the aforesaid grounds of appeal as they may think fit by themselves or by their representatives.”

2. All the grounds of appeal are interconnected therefore, for the sake of convenience all these appeals are adjudicated together. The fact in brief is that assessee Dena Bank merged with Band of Baroda filed its return of income for assessment year 2017-18 on 28.10.2017 declaring total income of Rs.nil. Thereafter, the assessee filed revised return of income on 24.01.2019 declaring total loss at Rs.339,96,14,813/-. The case was selected for scrutiny assessment by issuing of notice u/s 143(2) of the Act on 27.08.2018. Assessment under section 143(3) of the Act

was completed on 26.12.2019 assessing total income of the assessee at Rs.276.23 crores. Subsequently, the ld. Pr. CIT vide order u/s 263 of the Act dated 30.03.2022 observed that in respect of investment under held to maturity the A.O has allowed deduction in the form of amortization of premium without due verification. The ld. Pr.CIT also observed that while computing book profit u/s 115JB of the Act the A.O has allowed deduction on account of bad debt written off of Rs.833.39 crores without verifying that the same has not been debited to the profit and loss account. In view of the aforesaid observations, the ld. Pr. CIT held that assessment order passed u/s 143(3) of the Act was erroneous insofar as it was prejudicial to the interest of revenue. Therefore, the assessment order was set aside and A.O was directed to frame the order of assessment de novo after conducting necessary inquiries.

3. During the course of appellate proceedings before us the ld. Counsel contended that A.O has verified both the issue during the course of assessment. The ld. Counsel particularly referred the notice issued u/s 142(1) of the Act, dated 08.11.2019 as per serial no. 5, specific query was raised by the A.O in respect of detail of amortization amount of premium paid on securities which were classified as held till maturity. The A.O also asked vide serial no. 6 of the notice regarding the provision for restrured advances and diminution in fair value of assets and accounting treatment of the same for Held to maturity. The ld. Counsel also referred para 5 of the assessment order wherein the A.O has elaborately discussed the claim of write off of Bad Debt from page 7 to 12 of the order. The ld. Counsel also mentioned about the discussion of claim for deduction from the interest on securities held under HTM category at para 6 of the assessment order under the Broken period interest. The ld. Counsel also submitted that ld. Pr. CIT has not

considered the submission made before the A.O that assessee had already debited the profit and loss account by the entire amount of provision for Bad and Doubtful debt for doubtful debt of Rs.24,57,74,58,081/- which also included the amount of bad debt written off of Rs.833.39 crores and the same cannot be again debited to the profit and loss account . The ld. Counsel has also placed reliance on the judicial pronouncement in the cases i.e HDFC Bank Ltd. (2014) 366 ITR 505 (Bom); Vodafone Essar Gujarat Ltd. (2017) 397 ITR 55 (Guj); Sunbeam Auto Ltd. (2010) 159 taxmann.com 436 (Delhi); ARM Infra & Utilities Pvt. Ltd. (2022) (1) TMI 116- ITAT, Mumbai.

On the other hand the ld. D.R. supported the order of lower authorities.

4. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above in this order the ld. Pr.CIT held that the order passed by the A.O u/s 143(3) of the Act as erroneous as well as prejudicial to the interest of the revenue on the grounds that A.O has not verified the claim of deduction of the assessee pertaining to amortization of premium on Held to Maturity investment and also not verified the claim of deduction of Rs.833.39 crores as bad debt written off from the book profit. In this regard on the issue of claim of deduction on amortization of premium Held to Maturity investment on perusal of material on record it is observed that during the course of assessment proceedings vide notice u/s 142(1) of the Act, dated 08.11.2019 as per question no. 5 of the annexure the A.O had specifically asked the assessee to submit details of amortization amount of premium paid on securities which were classified as Held to Maturity. The assessee vide submission filed on 21.11.2019 explained that it had debited the profit

and loss account by Rs.62,14,64,731/- as amortization of premium on HTM investment. Even during the course of proceedings u/s 263 of the Act in response to notice issued on 02.02.2002 the assessee had submitted before the ld. Pr. CIT that assessee bank provided a detailed reply to the A.O vide letter dated 21.11.2016 as per answer no. 5 and 22 of the Annexure -2 in response to the query raised by the assessing officer. It is also noticed that the A.O had also discussed in detail the nature of HTM securities held by the assessee while making disallowance under the head broken period interest. Even the assessee has furnished 191 Kinds of HTM securities held with specific particulars i.e ID, credit card, name of security code, date of maturity, full value, book value, premium, years, amortization amount etc. The ld. Pr. CIT has not pointed out any inaccuracy in the claim of the assessee as against the RBI guidelines dated 16.10.2000 and CBDT Instruction No. 17 of 2008 dated 16.01.2008 on the issue of allowability of deduction on amortization of premium on HTM securities.

5. Regarding, the claim of bad debt written off from book profit u/s 115JB of the Act, the ld. Pr. CIT observed that the assessee bank deducted bad debt written off of Rs.833.39 crores out of the book profit incorrectly because the same amount had not been debited to the profit and loss account. The ld. D.R. has placed reliance on the decision of Lusture Manufacturing (P) Ltd. Vs. ITO (2016) 73 taxman.com 203 (Allahabad Tribunal) wherein held that while computing book profit u/s 115JB amount set apart as provision for bad debt has to be added take the net profit. However, we find that facts in the case of the assessee are distinguishable from the facts of the case referred by the ld. D.R. In the case of the assessee during the previous year relevant to the assessment year under consideration the assessee bank had debited an amount of

Rs.24,57,74,58,081/- to the profit and loss account towards provision for Bad & Doubtful Debt including the amount of Rs.833.39 crore claimed as Bad debt written off. In other words, the amount debited to profit and loss account includes the amount of write off of Rs.833.39 crores. The assessee bank had already debited the entire provision for bad and doubtful debt in the profit and loss account including the amount claimed as Bad debt written off, therefore, the assessee bank had claimed deduction of only Rs.833.39 crores while computing the Book Profit. The AO vide notice u/s 142(1) of the Act dated 08.11.2019 as per question no. 9 of annexure specifically asked the assessee to submit a note on applicability of Sec. 115JB/MAT provisions to the case of the assessee.

Vide reply dated 21.11.2010 the assessee submitted that MAT provisions were not applicable to the assessee being a banking company. However, the A.O had not accepted the explanation of the assessee and held that MAT provisions were applicable to the case of the assessee as elaborately discussed at para 10 of the assessment order. The A.O has given complete details of computation of Bank profit at page 34 to 38 of the assessment order. It is clearly demonstrated from the said computation of book profit reflected at page 36 of the assessment order showing that provision of NPA of Rs.24,57,74,58,081/- was added to the profit and loss account which also included the amount of Rs.833.39 crores as bad debt written off as discussed supra in this order. Thereafter the A.O had further reduced the amount of Bad Debt off Rs.833.39 crores which was already added to the profit and loss account being a part of the provisions of Doubtful debt of Rs.24,57,74,58,081/-. All these detailed facts and material were brought to the knowledge of the Pr. CIT during the course of proceedings u/s 263 of the Act, however, the Pr. CIT(A) had

not controverted these facts and material to substantiate his findings. In view of the above facts and circumstances and after taking into consideration the judicial pronouncements relied upon, we find that the decision of the Id. Pr.CIT for treating the assessment order as erroneous as well as prejudicial to the interest of the revenue is not justified. Therefore, we set aside the order passed u/s 363 of the Act. Accordingly, the appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 15.09.2022

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 15.09.2022

PS: Rohit

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 //

(Asst. Registrar)
ITAT, Mumbai