

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 199/JP/2022
निर्धारण वर्ष/Assessment Year : 2019-20

DCIT, Jaipur.	बनाम Vs.	Rajasthan Financial Corporation Udyog Bhawan, Tilak Mark, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCR 2385 J		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri Sanjeev Mathur (C.A.)
राजस्व की ओर से / Revenue by : Shri Sanjay Dhariwal (CIT)

सुनवाई की तारीख / Date of Hearing : 14/12/2022
उदघोषणा की तारीख / Date of Pronouncement: 12/01/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This is appeal filed by the Revenue and is arising out of the orders of the National Faceless Appeal Centre, Delhi [hereinafter referred to as 'NFAC', CIT(A)] dated 24.03.2022 for assessment year 2019-20 which in turn arise from the intimation u/s. 143(1) of the Income Tax act [here in after referred as Act] dated 14.05.2020 passed by the CPC, Bengaluru [here in after referred to as Id. AO].

2. In this appeal revenue has raised the following grounds of appeals: -

“1. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in holding that the assessee cannot be termed as a company within the meaning of Section 2(18) of the IT Act and consequently section 115JB is not applicable to the assessee.

2. The appellant craves its rights to add, amend or later any of the grounds on or before the hearing.”

2.1 The Revenue has also raised prayer for admitting the additional ground on 29.09.2022 the additional ground raised are as under:-

“1. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in holding that the assessee cannot be termed as a company and provisions of section 115JB are not applicable on the assessee, though as per section 2(17) r.w.s. 2(26) (ia) of the Act, the assessee is a 'Company' and the MAT provisions are applicable to all companies.

2. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in holding that the assessee is not liable to MAT even after amendment in the Act and section 115JB(2) has been amended by Finance Act, 2012 w.e.f 01.04.2013 though, after amendment of section 115JB(2), by Finance Act, 2012 w.e.f. 01.04.2013, not only the companies registered under the Companies Act are subject to the MAT provisions, but companies in whose case second proviso to section 129(1) of the Companies Act, 2013 are applicable (if such companies prepare profit and loss account as per the provisions of the Act governing such companies) are also subject to the provisions of MAT.

3. The appellate craves, its right to add, amend or alter any of the grounds on or before the hearing.”

3. For this additional ground the Id. DR submitted that even though there is a judgement in favour of the assessee by the jurisdictional high court but before the Hon'ble High Court, the applicable provision of the act was not placed before the high court. Therefore, to bring the correct

fact on record this additional ground is required to be placed for service in this appeal and considering the issue being technical and legal and it does not require any finding on facts from the lower authority the additional ground raised by the revenue be admitted for deciding it on its merits. Considering this aspect being technical grounds the same are admitted to be decided on merits.

4. The brief fact related to this case is that the assessee is a State Financial Corporation incorporated under the State Financial Corporation Act, 1951 and is engaged in financing of industries and as an aid for economic growth of the State. As per Intimation received u/s 143(1) of the Income-tax Act, 1961 for A.Y 2019-20 the Ld. AO calculated tax liability on the basis of minimum alternate tax u/s 115JB without considering the fact that MAT is not applicable on the corporation as decided by the Hon'ble High Court of Rajasthan in assessee's own case.

5. Feeling aggrieved from the said adjustment order of the Id. AO the assessee has preferred an appeal before the Id. CIT(A). The Id. CIT(A) has considered the written submission and facts of the case and allowed the appeal of the assessee. The relevant finding of the Id. CIT(A) is reiterated here in below:

“4. Decisions & Reasons:

4.1 At the very outset, it is noted that the appellant has presented the present appeal on 19.08.2020 against the due date falling on 14.06.2020, thereby causing a delay of about 2 months. The appellant has also taken the ground for condonation of the said delay stating that "Appeal could not be filed within stipulated time as our office was not working with full strength due to the coronavirus pandemic".

4.2 Considering the genuine difficulty faced by the appellant due to the Covid19 pandemic, condone the aforesaid delay. The appeal is, thus, taken up for disposal on merits.

4.3 It is observed that while processing the return of income, the AO has levied minimum alternate tax (MAT) u/s 115JB of the Act amounting to Rs.2,47,61,511/- Aggrieved by this order, the appellant has preferred this appeal. The appellant has contended that the Hon'ble Rajasthan High Court has, in relation to an earlier AY, held that the MAT provisions would not be applicable in the case of the appellant. Thus, the appellant has contended that the action of the AO is contrary to the decision of the Hon'ble jurisdictional High Court of Rajasthan. Accordingly, the appellant has sought for appropriate relief against the AO's order.

4.4 It is observed that the issue is also covered by the decision of the Hon'ble ITAT, Jaipur Bench in the appellant's own case for AY 2016-17 in DCIT vs. M/s Rajasthan Financial Corporation, ITA No. 1244/JP/2019 dated 24.03.2021 wherein it has been held as under:

"7. We have considered the rival contentions and carefully perused the material placed on record. From perusal of the record, we observe that the Id.CIT(A) has dealt with the issue in 2.3 to 2.3.2 of her order and the same is reproduced below:

"2.3 I have perused the facts of the case, the asso assessment order and the submissions of the appellant. In this case, it is seen that assessee's own case for A.Y. 2006-07, 2010-11, 2011-12 and 2012-13 in which similar issues were decided by Hon'ble ITAT, Jaipur. The same issues are also pertaining to this year i.e. 2016-17 wherein Assessing Officer made disallowance under section 36(1)(vii)(a)(c) of Rs. 34,62,000/- on account of bad debts written off and applied provision of section 115JB of the Act.

2.3.1 In appellate proceedings, the Authorized Representative relied various decisions which support to assessee's own case. It is found that appellant did not appeal against disallowance made by the Assessing Officer on account of bad debts but appellant challenged the action of Assessing Officer for application of provision of section 115JB in appeal. In appeal no.

610/14-15 dated 30.09.2016, CIT(A) has decided this issue in favour of assessee. Against this, department prefer appeal before Hon'ble ITAT, Jaipur. The Hon'ble ITAT in ITA No. 1063/JP/2016 for A. Y. 2012-13, has decided the issue of applicability of provision of section 115JB in favour of assessee in view of decision of Hon'ble High Court in assessee's own case. The relevant portion of ITAT order is as under:-

"16. Ground No. 1 is regarding the addition made by the AO while computing the book profit under section 115JB of the Act which was deleted by the Id. CIT (A) by holding that MAT provisions are not applicable in the case of the financial corporations as the accounts are not maintained as per Schedule-VI of the Companies Act.

17. We have heard the Id. D/R as well as the Id. A/R of the assessee and considered the relevant material on record. At the outset, we note that an identical issue was decided by the Hon'ble Jurisdictional High Court in assessee's own case for the earlier assessment years vide decision dated 6th July, 2017 in DBIT Appeal Nos. 593/2008, 552/2009, 157/2010 and 261/2016. The Hon'ble High Court in assessee's own case after considering a series of decisions on this issue has held in para 9 to 11 as under :-

"9. We have heard counsel for both the sides.

10. Before proceeding with the matter, the question of law which has been framed is very clear whether the respondent assessee will be governed under Section 115 JA read with Section 2(18)(a). On a plain reading as reproduced above and in view of forgoing conclusion and even as per statement of Mr. Mathur, it will not be covered. However, he has tried to take support of Section 43 which is misconceived. While interpreting the taxing statute, the Court has to rely upon the taxing statute and not any other provisions.

11. In that view of the matter, the issue is answered in favour of the assessee against the department."

Accordingly, in view of the decision of the Hon'ble Jurisdictional High Court in assessee's own case, we find no error or illegality in the order of Id. CIT (A) qua this issue."

2.3.2 Respectfully following decision, it is held that this issue is covered in favour of appellant. Therefore, provisions of section

115JB are not applicable in assessee's case and it is not to be subjected to MAT. This ground of appeal is allowed."

4.5 Respectfully following the decisions of the Hon'ble jurisdictional High Court of Rajasthan as well as the decision of the Hon'ble ITAT Jaipur Bench as discussed above, the AO is directed not to levy tax under the provisions of section 115JB of the Act. With this, the Ground No. 1 raised by the appellant is allowed. The Ground No. 2 being vague and general in nature, requires no separate adjudication.

4.6 In the result, the appeal of the appellant is allowed."

6. Revenue not satisfied with the findings of the Id. CIT(A) has marched this appeal on the grounds as raised which was subsequently during the pendency of this appeal revenue raised additional grounds also. Revenue filed a paper book containing following documents to support contentions:

S. No.	Description of the case	Page No.
1	Judgment of Hon'ble Rajasthan High Court CIT, Jaipur-II, Jaipur vs. Rajasthan Financial Corporation, Jaipur	1-14
2	Definition of Company	15-16
3	Company Law 129	17-19
4	The State Financial Corporations Act, 1951	20-24
5	The Rajasthan Financial Corporation General Regulations, 2002	25-53
6	Balance Sheet of RFC as at 31 st March, 2019	54-87

7. In addition to the above paper book to support the contentions so raised by the revenue the Id. DR filed written submission, the same is reiterated here in below:

" 2. The only issue before the Id. CIT(A) was applicability of section 115JB in the case of the assessee. The id. CIT(A) has allowed the appeal treating this case as 'covered case by citing the judgement of the Hon'ble Rajasthan High Court dated 06.07.2017 in DBIT Appeal

Nos. 593/2008, 552/2009, 17/2010 and 261/2016 in its own case and orders of the Hon'ble ITAT Jaipur on similar issue for AY 2006-07, 2010-11, 2011-12 and 2012-13.

3. The judgement of the Hon'ble High Court dated 06.07.2017 is placed at page no. to 14 of the DPB filed on 12.07.2022. The hon'ble ITAT in its orders has followed this judgement for dismissing the appeals of the Revenue. Therefore, threadbare analysis of this judgement is important to reach at a conclusion whether the aforesaid judgement is binding or not.

4. The question of law framed by the Hon'ble High Court while admitting the appeal of the Revenue was whether in the facts and circumstances of the case the ITAT has not acted perversely and was justified in holding that the assessee cannot be termed as company within the meaning of section 2(18)(a) of the IT Act and consequently section 115JA/115JB is not applicable to the assessee. The Hon'ble High Court gave its finding in para-10 and 11 of the judgement as under-

"10. Before proceeding with the matter, the question of law which has been framed is very clear whether the respondent assessee will be governed under section 1151A read with section 2(18)(a) of the Act. On a plain reading as reproduced above and in view of the forgoing conclusion and even as per statement of Mr. Mathur, it will not be covered. However, he has tried to take support of section 43 which is misconceived. While interpreting the taxing statute, the Court has to rely upon the taxing statute and not any other provisions, 11. in that view of the matter, the issue is answered in favour of the assessee against the department." The reference to section 43 in para-10 is section 43 of State Financial Corporation Act (SFC Act hereinafter)."

5. It is clear from the judgement of the Hon'ble High Court that the High Court held that section 2(18)(a) of the IT Act is not applicable in the case of the assessee and consequently section 115JA will also not be applicable, as the assessee is not a "company" and provisions of section 1153A will only be applicable in the case of the company. So, the moot point is whether the assessee is a company or not and whether section 2(18)(a) is relevant or not for deciding this issue.

Before proceeding further, it is important to bring into the notice of the Hon'ble Bench that the Department has filed an SLP on 25.04.2018 in case no. SLP(C) No. 013776/2018. The same has been admitted and pending for adjudication.

6. A perusal of section 2(18) reveals that it deals with the definition of 'company in which the public are substantially interested. Clause (a) specifies that, inter-alia, such companies will be the companies which

are owned by the Government or whose 40% shareholding is with the Government.

Section 115JA as well as 115JB talk about taxes to be paid by a company in certain specific cases. These are deeming provisions beginning with the non-obstinate phrases. Hence, if the total income of a company as per the normal provisions is less than book profits (or 30% of book profits in cases covered under section 115JA), then the book profits are construed as the total income and tax is paid as per the rates specified in section 115 JA or 115JB, as the case may be. Book profits are defined in section itself. There have been certain legislative changes and in the year under consideration, the book profits are defined as profit shown in the statement of profit and loss in accordance with the Schedule III to the Companies Act, 2013 or in case of companies to which the second proviso to section 129(1) of Companies Act is applicable, profit as per statement of profit and loss in accordance with the provisions of the Act governing such companies with certain adjustments as mentioned in Explanation-to section 115JB.

7. Reverting back to the status of the impugned assessee, it is clear that section 115JB does not talk about companies in which public are substantially interested. It only talks about a 'company, as this provision is applicable to both public and private companies. The Hon'ble High Court is absolutely correct when it holds that interpretation of the term has to be made as per the provisions of the Income-tax Act, but it lost sight of the correct legal position thereafter, because it seems that the Id. Counsel of the Department did not bring the applicable provisions into the notice of the Hon'ble High Court. The assessee is a 'company' or not, can be decided with the help of the provisions of section 2(17) of the Act, and not relying upon section 2(18)(a) of the Act. Section 2(17) reads as under-

"company" means-

- (i) any Indian company or*
- (ii) any body corporate incorporated by or under the laws of a country outside India, or*
- (iii) any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the Indian Income-tax Act, 1922 (11 of 1922) or which is or was assessable or was assessed under this Act as a company for any assessment year commencing on or before the 1st day of April, 1970, or*
- (iv) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Board to be a company:*

Provided that such institution, association or body shall be deemed to be a company only for such assessment year or assessment years (whether commencing before the 1st day of April, 1971 or on or after that date) as may be specified in the declaration:

Further, section 2(26) defines Indian company' as under-

"Indian company" means a company formed and registered under the Companies Act, 1956 (1 of 1956), and includes-

- (i) a company formed and registered under any law relating to companies formerly in force in any part of India (other than the State of Jammu and Kashmir and the Union territories specified in sub-clause fill of this clause)];*
- (ia) a corporation established by or under a Central, State or Provincial Act:*
- (ib) any institution, association or body which is declared by the Board to be a company under clause (17):]*
- (ii) in the case of the State of Jammu and Kashmir, a company formed and registered under any law for the time being in force in that State:*
- (iii) in the case of any of the Union territories of Dadra and Nagar Haveli, Goa Daman and Diu and Pondicherry a company formed and registered under any law for the time being in force in that Union territory:]*

Provided that the "fregistered or, as the case may be, principal office of the company, corporation, institution, association or body in all cases is in India

Thus, a conjoint reading of section 2(17)(i) and section 2(26)(ia) makes it amply clear that a corporation established by or under a Central, State or Provincial Act is 'company" as per the Income-tax Act. It is uncontroverted fact that the assessee is a corporation established under the SFC Act, 1951. The relevant extracts of this Act is placed on the DPB at page 20-24. The RFC came into existence in 1955 in pursuance of the above Central Act. Hence, RFC is a "company" as per provisions of the Income-tax Act and it is because of this fact why "C appears at fourth place of its 10 digit alpha-numeric PAN. Further, it itself files its return of income in the capacity of a company.

8. All the above provisions and relevant facts were not considered by the Hon'ble High Court. As the relevant provisions were not considered, therefore, the judgement of the Hon'ble High Court is per-incuriam and, therefore, not binding on the lower authorities. The Hon'ble Supreme Court in the case of A-One Granites v State of UP & Ors has held that without referring to the relevant rule for granting a

mining license, a direction qua the same could not be issued. The Hon'ble Court held that-

"Thus we have no difficulty in holding that as the question regarding applicability of rule 72 of the Rules having not been even referred to, much less considered by this Court in the earlier appeals, it cannot be said that the point is concluded by the same and no longer res integra and accordingly this court is called upon to decide the same."

The Hon'ble Supreme Court in the case of State of U.P. And Anr v M/s Synthetics and Chemicals Ltd and Anr reported in 1991 SCC (4) 139 has held that-

'Incurio literally means 'carelessness'. In practice per incurium appears to mean per ignoratium." English Courts have developed this principle in relaxation of the rule of stare decisis. The quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority". (1944 IKB 718 Young v. Bristol Aeroplane Ltd. Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sohu v Rajdewan Dubey, [1962] 2 SCR 558 this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted a passage from Halsbury Laws of England incorporating one of the exceptions when the decision of an Appellate Court is not binding

Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. A decision passed sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind' (Salmond 12th Edition). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd., [1941] IKB 675 the Court did not feel bound by earlier decision as it was rendered without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gumam Kaur, [1989] 1 SCC 101. The Bench held that, 'precedents sub-silentio and without argument are of no moment. The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any

occasion is not ratio decedendi. In Shama Rao v. State of Pondicherry, AIR 1967 SC 1680 it was observed, it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

9. The next issue which arises is when the assessee is not registered under the Companies Act, can it still be subject to MAT. This issue was not before the Hon'ble High Court, but the assessee has been raising this issue. In this regard, attention of the Hon'ble Bench is invited to the discussion made in para-6 above, wherein it has been clarified that as per the provisions in force in the year under consideration, in case of companies to which the second proviso to section 129(1) of Companies Act is applicable, book profits will be profit as per statement of profit and loss in accordance with the provisions of the Act governing such companies with certain adjustments as mentioned in Explanation-I to section 115JB. Therefore, in cases where the company is not registered in the Companies Act, but in whose case second proviso to section 129 is applicable, the MAT will be levied. Section 129 of the Companies Act reads as under-

#129. Financial statement. (1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:

Provided that the items contained in such financial statements shall be in accordance with the accounting standards:

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company:

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose-

(a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (4 of 1938), or the

Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).

(b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949 (10 of 1949):

(c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003 (36 of 2003):

(d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law."

Thus, sub-section (1) deals financial statements and provides that these statements will be as per Schedule-III of the Companies Act. However, sub-section (1) is not applicable in the case of insurance, banking, power and other class of companies for which form of financial statement has been specified in or under their governing Acts.

As per section 48 of State Financial Corporation Act, the Board has been given power to make regulations. The Rajasthan Financial General Regulations, 2002 have been made in pursuance of the aforesaid section. The copy of these regulations is placed at pg no. 25 to 531 of the DPB. As per Regulation No. 80, Balance-sheet and Profit & Loss Account is required to be made as per Annexure-C and Annexure-D respectively. Annexure-D is placed at Page No. 52 of the DPB. Thus, it is clear that form of Profit and Loss Account is specified under the Act governing the assessee and MAT provisions are applicable in view of section 115JB of the 1.T.Act r.w.s. 129 of the Companies Act.

10. In view of the above discussion, the Hon'ble Bench is requested to admit the additional/ amended grounds of appeal in view of the judgement of the Hon'ble Supreme Court in the case of National Thermal Power Corporation v CIT reported in 229 ITR 383. and set-aside the order of CIT(A) and order of the A.O. may kindly be restored."

8. In addition to the above written submission the Id. DR vehemently argued that if the contention of the assessee is accepted then the purpose of the amendment made vide Finance Act 2012 will be

defeated and the very purpose of this amendment was to tax the those companies under the special provision and this applies to the assessee company too. The Id. DR relying on the judgment of NTPC's case submitted the additional grounds and differentiated the judgment of the Jurisdictional High Court. He has submitted that before the court the provision of section 2(17) were never brought to the notice of the court. Therefore, he on conjoint reading of the provision of section 2(17) r.w.s. 115JB supported that even though the assessee is not registered under the companies act, they are covered under the MAT provisions as per section 115JB of the Act. Considering the amendment made in the law and definition of company the assessee is liable to MAT provisions. The Id. DR argued that there are two types of company one is registered under the companies and another not registered under the company act and the assessee is falling in another category even though not registered under the companies Act assessee is liable to MAT provisions.

9. To drive home the various contentions so raised the Id. DR has also relied upon the following judgements;

Submission dated 19/10/2022

S. No.	Description of the case	Page No.
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1	Kunhayammed & Ors Vs State of Kerala & Anr. On 19 July, 2000 (Supreme Court of India)	1-17
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Submission dated 12/10/2022

S. No.	Description of the case	Page No.
1	M/s A-One Granites vs. State of U.P. & Ors on 16 February, 2001 (Supreme Court of India)	1-9
2	State Bank of U. P. and Anr. Vs. M/s Synthetics and Chemicals Ltd. and Anr. 18.07.1991 (SC)	10-32
3	CIT vs. Thana Electricity Supply Ltd. (1994) 206 ITR 727 (Bombay)	33-43
4	S. P. Gupta vs. President of India and Ors. On 30 December, 1981 (SC)	44-107
5	Commissioner of Income-tax vs. Sun Engineering Works (P.) Ltd. (1992) 64 Taxman 442 (SC)	108-140
6	Mumbai Kamgar Sabha, Bombay vs. M/s Abdulbhai Faizullabhai & Ors on 10 March, 1976 (SC)	141-162
7	Amar Nath Om Prakash And Ors. Vs. State of Punjab and Ors. On 19 November, 1984 (SC)	163-180
8	Mohan das Issardas And Ors. Vs. A. N. Sattanathan and Ors. On 9 August, 1954 (Bombay High Court)	181-194

The Id. DR drawn our attention to the provision of section 115JB, 2(17) & 2(18) of the Act. The Id. DR respectfully differentiated the judgment of the Honourable jurisdictional high court and submitted that the it was not argued before the court about the provision of section 2(17) & 2(26)(ia) of the Act but was drawn attention to section 2(18) of the Act. For the sake of brevity both the provision are reiterated here in below:

Provision of section 2(17)

(17) "company" means—
(i) any Indian company, or

- (ii) any body corporate incorporated by or under the laws of a country outside India, or
- (iii) any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the Indian Income-tax Act, 1922 (11 of 1922) or which is or was assessable or was assessed under this Act as a company for any assessment year commencing on or before the 1st day of April, 1970, or
- (iv) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Board to be a company :
Provided that such institution, association or body shall be deemed to be a company only for such assessment year or assessment years (whether commencing before the 1st day of April, 1971 or on or after that date) as may be specified in the declaration ;

Provision of section 2(18)

- (18) "company in which the public are substantially interested"—a company is said to be a company in which the public are substantially interested—
 - (a) if it is a company owned by the Government or the Reserve Bank of India or in which not less than forty per cent of the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a corporation owned by that bank ; or
 - (aa) if it is a company which is registered under section 25 of the Companies Act, 1956 (1 of 1956)⁹ ; or
 - (ab) if it is a company having no share capital and if, having regard to its objects, the nature and composition of its membership and other relevant considerations, it is declared by order of the Board to be a company in which the public are substantially interested :
Provided that such company shall be deemed to be a company in which the public are substantially interested only for such assessment year or assessment years (whether commencing before the 1st day of April, 1971, or on or after that date) as may be specified in the declaration ; or
 - (ac) if it is a mutual benefit finance company, that is to say, a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government under section 620A¹⁰ of the Companies Act, 1956 (1 of 1956), to be a Nidhi or Mutual Benefit Society ; or
 - (ad) if it is a company, wherein shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by, one or more co-operative societies ;

- (b) if it is a company which is not a private company as defined in the Companies Act, 1956 (1 of 1956)10a, and the conditions specified either in item (A) or in item (B) are fulfilled, namely :—
- (A) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) were, as on the last day of the relevant previous year, listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and any rules made thereunder ;
- (B) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by—
- (a) the Government, or
- (b) a corporation established by a Central, State or Provincial Act, or
- (c) any company to which this clause applies or any subsidiary company of such company if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.

Explanation.—In its application to an Indian company whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power, item (B) shall have effect as if for the words "not less than fifty per cent", the words "not less than forty per cent" had been substituted;

Provision of section 2(26)

- (26) "Indian company" means a company formed and registered under the Companies Act, 1956 (1 of 1956), and includes—
- (i) a company formed and registered under any law relating to companies formerly in force in any part of India (other than the State of Jammu and Kashmir and the Union territories specified in sub-clause (iii) of this clause) ;
- (ia) a corporation established by or under a Central, State or Provincial Act ;
- (ib) any institution, association or body which is declared by the Board to be a company under clause (17) ;
- (ii) in the case of the State of Jammu and Kashmir, a company formed and registered under any law for the time being in force in that State ;
- (iii) in the case of any of the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry, a company formed and registered under any law for the time being in force in that Union territory :

Provided that the registered or, as the case may be, principal office of the company, corporation, institution, association or body in all cases is in India ;

10. Per contra, the Id. AR appearing on behalf of the assessee submitted a detailed written submission which is reiterated here in below:-

“Rajasthan Financial Corporation is a Corporation registered under State financial Corporation Act, 1951. The Corporation filed its Income tax return u/s 139(1) of the Income tax act, 1961 for the AY 2019-20 and computed the tax liability as per the normal tax rate without considering the provisions of sec 115 JB of the act, as the section 115JB of the act is not applicable to the Corporation.

The CPC processed the return u/s 143(1) of the act and made adjustment by applying the provisions of sec 115JB and determined the tax liability accordingly. The CPC has not given any intimation before making such adjustment to the assessee as provided under the first proviso to sec 143(1) of the act, which is contrary to the provision of sec 143(1) of the act and such adjustment is void abintio. The CPC computed the tax liability on the book profit without determining the book profit as per explanation (1) of sec 115JB of the act.

The CPC also made such adjustment contrary to clause (a) of the provision of sec 143(1) of the act and this adjustment is not covered under the said clause.

We further submit that MAT provisions U/S 115JB are not applicable to the assessee even after the amendment in sec 115JB(2) of the act w.e.f 1.04.2013.

We are reproducing the amended sec 115 JB(2) of the act as under:

(2) Every assessee,

(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its "[statement of profit and loss] for the relevant previous year in accordance with the provisions of [Schedule III] to the "[Companies Act, 2013 (18 of 2013));
or

(b) being a company, to which the "[second proviso to sub-section (1) of section 129] of the43[Companies Act, 2013 (18 of 2013)] is applicable, shall, for the purposes of this section, prepare its "[statement of profit and loss] for the relevant previous year in accordance with the provisions of the Act governing such company:]"

We are reproducing the second proviso to sub section (1) of section 129 of the Companies act,2013 as under

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company:

We submit that since the corporation does not prepare its statement of profit and loss as per schedule III of the Companies act,2013, therefore clause (a) of sec 115J8(2) is not applicable to the Corporation.

Clause (b) of Sec 115JB(2) is also not applicable to the Corporation as the second proviso to sub section (1) of sec 129 of the Companies act, 2013 is applicable only to the Companies as defined under the Companies act,2013.

Any reference to the word Company in second proviso to sub section (1) of section 129 means the Company as defined in the Companies act,2013 as that is a Companies Act,2013 section and where Company means only the Company as defined under the Companies act, 2013 and not in any other act. (Company has been defined in sec 2(20) of the Companies act, 2013)

We submit that second proviso to sub section (1) of section 129 of the Companies act, 2013 is applicable to the Companies which fall in the definition of company as defined under the Companies act but are also governed by other acts and prepare their "[statement of profit and loss] for the relevant previous year in accordance with the provisions of the Act governing such company:]" such as Electricity Companies though they are registered under the Companies act but are governed by the Electricity act, 2003 and prepare their Statement of profit & loss as per the provisions under the Electricity act, 2003 Banking Companies though registered under the Companies act,2013 but are governed by the Banking Regulation Act, 1949 and prepare its statement of profit & loss as per the provisions of the Banking regulation act, 1949, Insurance Companies though registered under the Companies act,2013 but are governed by Insurance Regularity act, and prepare their statement of profit & loss as per the provision of the governing act.etc

Rajasthan Financial Corporation is not a Company as per sec 2(20) of the Companies act, 2013 as it is not registered under the Companies act,2013 but is governed by a special act of the Parliament. Hence the provision of clause (b) of sec 115JB(2) of the Income tax act does not apply to it even it prepares its statement of Profit and loss as per SFC act, 1951.

We are reproducing the sec 2(20) of the Companies act, 2013 as under;

"Company" Means a company incorporated under this Act or under any previous company law;

The Department has filed the additional grounds of appeal. Our submission against such additional grounds are as under,

(i) Additional Ground No 1 - "Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in holding that the assessee cannot be termed as a company and provisions of section 115JB are not applicable on the assessee, though as per section 2(17) r.w.s. 2(26) ((ia) of the Act, the assessee is a "Company" and the MAT provisions are applicable to all companies.

Our submission

We submit that section 115JB is applicable to the assesses covered u/s 115JB(2) of the act. As the Rajasthan Financial Corporation is not covered under any of clause (a) and (b) of sec 115JB(2) of the act as explained above, therefore MAT provisions u/s 115 JB are not applicable to the Corporation.

(ii) Additional Ground No 2-Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in holding that the assessee is not liable to MAT even after amendment in the Act and section 115JB(2) has been amended by Finance Act, 2012 w.e.f. 01.04.2013 though, after amendment of section 115JB(2), by Finance Act, 2012 w.e.f. 01.04.2013 not only the companies registered under the Companies Act are subject to the MAT provisions, but companies in whose case second proviso to section 129(1) of the Companies Act, 2013 are applicable (if such companies prepare profit and loss account as per the provisions of the Act governing such companies) are also subject to the provisions of MAT.

Our submission

We submit that even after the amendment of sec 115JB(2), by Finance Act, 2012 w.e.f 01.04.2013 the MAT provisions are not applicable to the Rajasthan Financial Corporation. As per amendment, clause (b) has been inserted by the Finance act, 2012 and clause (b) of Sec 115JB(2) is also not applicable to the Corporation as the second proviso to sub section (1) of Sc. 129 of the applicable only to the companies as defined under the companies act.

Any reference to the word Company in second proviso to sub section (1) of section 129 means the Company as defined in the Companies act, 2013 as it is Company law section and where Company means only the Company as defined under the Company law and not in any other act. (Company has been defined in sec 2(20) of the Companies act, 2013) We submit that second proviso to sub section (1) of section 129 of the Companies act, 2013 is applicable to the Companies as defined under the Companies act, 2013 but are governed by other acts and prepare its "[statement of profit and loss] for the relevant previous year in accordance with the provisions of the Act governing such company:] such as Electricity Companies though they are registered under the Companies act but are governed by the Electricity act, 2003 and prepare its Statement of profit & loss as per the provisions under the Electricity act, 2003, Banking Companies though registered under the Companies act, 2013 but are governed by the Banking Regulation Act, 1949 and prepares its statement of profit & loss as per the

provisions of the Banking regulation act, 1949, Insurance Companies though registered under the Companies act,2013 but are governed by Insurance Regularity act, and prepares its statement of profit & loss as per the provision of the governing act. Etc

We also draw your attention to explanation 3 of sec 115JB of the Income tax act. 1961, which clarifies the applicability of MAT provisions.

Explanation 3- "For the removal of doubts, it is hereby clarified that for the purposes of this section, the assessee, being a company to which the [second proviso to sub-section (1) of section 129 of the Companies Act, 2013 (18 of 2013)] is applicable, has, for an assessment year commencing on or before the 1" day of April 2012, an option to prepare its (statement of profit and loss) for the relevant previous year either in accordance with the provisions of [Schedule III to the Companies Act, 2013 (18 of 2013)] or in accordance with the provisions of the Act governing such company.]"

We submit that Rajasthan Financial Corporation had no option on or before 1" day of April 2012, to prepare its statement of Profit & Loss as per schedule III to the Companies act,2013 as the Corporation is not a Company as defined in the Companies act.2013. The explanation 3 of sec 115JB of the Income tax act, 1961 made it very clear that second proviso to sub section (1) of sec 129 of the Companies act,2013 is not applicable to the Rajasthan Financial Corporation.

Keeping in view of the above submission, we request the honorable bench to kindly dismiss the appeal filed by the Department."

11. In addition to the above written submission the Id. AR of the assessee submitted that the assessee is not registered as company and therefore, even though the same is not argued before the court in accordance with the provision of section 2(17) instead it was as per provision of section 2(18) will not make any difference as the status of the assessee is not company, as per provision of the either of the section and therefore, he supported the order of the lower authority and also heavily relied upon the order of the Jurisdictional High Court in assessee's own case.

12. We have considered the rival contentions and submission placed on record by both the parties, the orders of the lower

authorities and also gone through the judicial decision cited before us to drive home to the contentions so raised. The bench noted that the issue before us about the applicability of provision of section 115JB to the assessee "Rajasthan Financial Corporation" which is a Corporation registered under State financial Corporation Act, 1951. For these we have gone through the definition of company as given in Section 2(17) which defines company and it includes Indian Company. We have also gone through the provision of section 2(26) which defines Indian company and thereby Section 2(26)(ia) includes a corporation established by or under a Central, State or Provisional Act as argued by the Id. DR. We have also considered the plea of the Id. DR that section 115 JB section it self is a code for charging tax for a company and considering the definition of company as given in section 2(17) and 2(26) assessee is subjected to this special tax on companies. As argued by Id. DR since the provision of section 115JB in itself is a code and therefore, the provision of section 115JB(2) also deals with the coverage of the assessee. The relevant extract is reiterated herein below :

Special provision for payment of tax by certain companies.

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:

Provided that for the previous year relevant to the assessment year commencing on or after the 1st day of April, 2020, the provisions of this sub-section shall have effect as if for the words "eighteen and one-half per cent" occurring at both the places, the words "fifteen per cent" had been substituted.

- (2) Every assessee,—
- (a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of Schedule III to the Companies Act, 2013 (18 of 2013); or
 - (b) being a company, to which the second proviso to sub-section (1) of section 129 of the Companies Act, 2013 (18 of 2013) is applicable, shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of the Act governing such company:

As it is evident that section 115JB being a special provision and it a code itself defines the coverage of the assessee covered in sub-section 2 of section 115JB. This section neither deal with the company or Indian company it deals with the assessee being company and provision of the sub-section (2) very well defines it coverage. Thus, we consider the arguments of the Id. DR but considering the provision of section 115JB(2) and the decision of the jurisdictional high court in the case of the assessee we do not find any force whether the Honourable Jurisdictional High Court has considered the provision of section 2(17), 2(18) or 2(26) dealt with or not. Here the charging section deals and considered only those companies which are registered under the Companies Act and not deemed company as per provision of section 2(17) or 2 (26). Therefore, we are of the considered view that even though revenue has revised its ground to substantiate its case in accordance with the definition of the company we do not agree with the contention of the Id. DR that the since that definition includes the corporation but provision of section 115JB deals only charge of tax of a company and it refers the section 129 of the Companies Act only. The charge of tax being a separate code and the section clearly cover the type of company under the tax net the same cannot be widened based

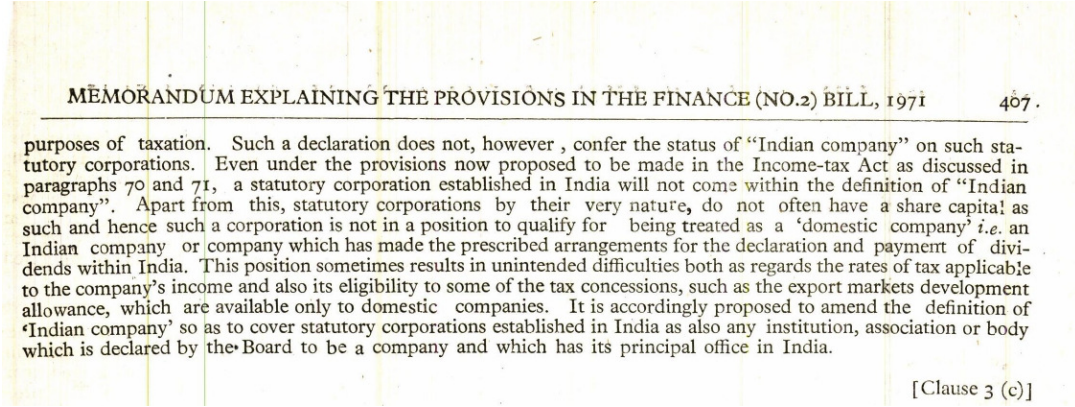
on the definition given in the Act for the other purposes. To substantiate this view, we have also gone through the memorandum explaining the definitions of company as amended in 1971. The purpose of including the corporation under this definition as it is evident from the following extract is to give the benefit of a company and not to tax them as company. The relevant memorandum explaining the purpose of the provision of section 2(17) & 2(26) is extracted here in below:

70. **Definition of "company".**—For purposes of the Income-tax Act, the term "company" is defined to mean : (i) any Indian company, or (ii) association, whether incorporated or not and whether Indian or non-Indian, which is declared by a general or special order of the Central Board of Direct Taxes to be a "company" for purpose of the Act. This power to declare any association to be a "company" for tax purposes has been made use of for several years past with a view to conferring the status of a "company" on foreign companies as also on entities which are not otherwise within the scope of that concept. Such declaration is given by the Board, ordinarily, in the case of any entity which possesses the ordinary characteristics of a company limited by shares and which is a legal person according to the laws of the country in which it is incorporated. Besides declaring companies registered in foreign countries to be "companies" for purposes of taxation in India, statutory corporations established by a Central, Provincial or State enactment, such as road transport corporations, air transport corporations etc., have been declared to be companies. Foreign corporations in which the capital is held wholly or partly by a foreign Government have also been declared as "companies" for the purposes of income-tax, where such corporations are legal entities separate from the Government and are capable of holding property independently and of suing and being sued according to the laws of that country. The provision has also been used on a few occasions to confer the status of company on bodies such as Chambers of Commerce, Clubs, etc. even though these bodies do not possess the ordinary characteristics of a company limited by shares. The declaration under this provision has been given in some cases with retrospective effect to cover past years as well. Such a retrospective declaration was given for special reasons such as that the application for the declaration was delayed for some reason or the other; or that entity had already paid tax on its income for any past year or years at the progressive rates of tax applicable to non-corporate taxpayers when the taxable income rose to higher ranges, so as to take advantage low but sought a declaration as a "company", when the taxable income rose to higher ranges, so as to take advantage of the flat rate applicable to companies as this would be more favourable to it. In the latter type of cases the declaration was made operative retrospectively to cover years in which the income had been taxed at lower rates on the consideration that if the taxpayer wanted the benefit of the flat rate applicable to companies for the later years, it should agree to pay tax at the same rates for earlier years as well.

71. The requirement that a foreign company could be treated as a company for purposes of the Income-tax Act only if it has been declared as a company by the Board generates unnecessary work. Further, giving retrospective effect to declarations made in the case of foreign companies or other non-corporate entities is not strictly in accordance with the provisions of the law. In order to place the existing practice, that has been followed over the last many years, on a statutory footing, and to reduce the number of cases in which declarations as a company has to be given by the Board, it is proposed to amend the definition of "company" for purposes of the Income-tax Act. Under the proposed definition, the term "company" will include, besides any Indian company, any body incorporated by or under the laws of any country outside India. The term will also include any institution, association or body which is or was assessable or was assessed under the Indian Income-tax Act, 1922 or the Income-tax Act, 1961 as a company for any assessment year upto and including the assessment year 1970-71. Further, as under the existing definition, the Central Board of Direct Taxes will have the power to declare, by general or special order that any institution, association or body, whether incorporated or not and whether Indian or non-Indian will be treated as a company for purposes of the Income-tax Act. This power of the Board is now being specifically made exercisable even in relation to past assessment years (whether commencing before or after 1-4-1971) and the declaration will have effect for any assessment year or years specified therein.

[Clause 3 (a)]

72. **Definition of "Indian company".**—The definition of the term "Indian company" in the relevant provision of the Income-tax Act presently covers only those companies which are formed and registered under the Companies Act, 1956 or the law relating to companies formerly in force in any part of India including Jammu & Kashmir or in the union Territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry. It does not cover statutory corporations which, as stated in paragraph 70 have to seek a declaration to be a company for



Thus, based on these observations we are of the considered view that the grounds raised by revenue has no merits and the same are stands dismissed.

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

Order pronounced in the open court on 12/01/2023

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 12/01/2023

*Ganesh Kumar

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

1. अपीलार्थी / The Appellant- DCIT, Jaipur.
2. प्रत्यर्थी / The Respondent- Rajasthan Financial Corporation, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 199/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar