

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 1024/MUM/2021
(Assessment Year 2016-17)

ITA No. 1025/MUM/2021
(Assessment Year 2017-18)

Bank of Baroda
(Erstwhile Vijaya Bank)
C-26, G-Block, Baroda
Caorporate Centre, BKC,
Bandra East,
Mumbai- 400 051

(Appellant)

The PR.CIT-2
Aayakar Bhavan, M.K.Road,
Mumbai- 400 020

Vs.

(Respondent)

PAN No. AAACB1534F

Assessee by : Shri. S. Ananthan, Adv.
Revenue by : Dr. Mahesh Akhade, CIT Dr.

Date of hearing: 15.11.2022
Date of pronouncement : 13.02.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the two appeals filed by Bank of Baroda (erstwhile Vijaya bank) for A.Y. 2017-18 and A.Y. 2016 – 17 in ITA no. 1025/Mum/2021 and ITA no. 1025/Mum/2021 against the order passed by the Principal Commissioner Of Income Tax – 2, Mumbai (the learned PCIT) under section 263 of the Income-tax Act, 1961 (the Act) on 31st March, 2021 for both the years.

02. In ITA number 1024/Mum/2021 for A.Y. 2016 -17, assessee has raised following grounds of appeal: -

"The Appellant bank filed return of income for the Assessment year 2016-17 on 14-10-2016 declaring Loss of Rs 499,95,43,328/- under normal provisions of the Act. A revised return was filed on 31.03.2018 declaring Loss of Rs 439,78,41,996/- The Assessment u/s 143(3) was completed on 21-12-2018 by making various additions and determining the Total Income at Rs. 1701,59,47,399/- under the normal provisions of the Act and ₹1570,90,75,592/- u/s 115JB of the Act. On the basis of the examination of the records, a notice u/s 263 dated 04-02-2020 and 12.03.2020 was issued on the Appellant bank and the same was served on 11.02.2020 and 13.03.2020 respectively. In the said notice, it was alleged that the order of the learned Assessing Officer was erroneous and prejudicial to the interest of the Revenue in respect of the following items:

- 1. Interest on Non Performing Assets.*
- 2. Deferred payment receipt of guarantee commission.*
- 3. Loss on sale of assets to ARC.*
- 4. Interest on Perpetual Bonds.*
- 5 Provision and Contingency (Provision for NPA) treatment while computing Book Profit.*

The Appellant bank gave a detailed reply to the said notice. Disregarding the contentions of the Appellant bank, the learned Pr. CIT passed the impugned order holding that the Assessment order dated 21-12-2018 is erroneous and prejudicial to the interest of the Revenue due to lack of enquiry under Explanation 2 to section 263 of the Income Tax Act, 1961 and set aside the same, with a direction to the learned Assessing Officer to compute the correct income after affording opportunity of being heard.

Aggrieved by the order of the Pr. CIT, the Appellant is preferring this appeal on the following Grounds:

1. The learned Principal Commissioner of Income-tax (Pr. CIT) erred in passing an order u/s.263 and directing the Assessing Officer to modify the order dated 21-12-2018 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 suit that the order of the Pr. CIT be quashed.

1.3. The learned Pt. 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 the provisions of section 43D r.w.r. 6EA applies to Non Performing Assets (NPA) which are more than 180 days.

2.1. The learned Pr. CIT failed to appreciate the fact that the Rule 6EA applies to all NPAs even if they are less than 180 days.

2.2. The learned Pr CIT failed to appreciate the fact that the interest on NPA are to be offered to tax only on realization.

2.3. Learned Pr. CIT failed to appreciate the fact that once an account is classified as NPA as per RBI norms, then the income on the same is taxable on realization basis only.

3 The learned Pr. CIT erred in holding that the Assessment order is erroneous in respect of offering to income, the guarantee commission.

3.1. *The learned Pr CIT failed to appreciate the fact that the Appellant bank has offered to tax the guarantee commission on cash basis.*

3.2. *The order of the learned Pr.CIT is based on surmises and conjunctures.*

4. *The learned Pr. CIT erred in holding that the Assessment order is erroneous on the issue of loss on sale of assets to ARC.*

4.1. *The order of the learned Pr. CIT is based on surmises and conjunctures.*

4.2. *The learned Pr. CIT failed to appreciate the fact that the Appellant bank did not claim any loss on assets sold to ARC.*

4.3. *The learned Pr. CIT erred in relying on irrelevant records to remand the issue to the learned Assessing Officer.*

5. *The learned Pr. CIT erred in holding that the Assessment order is erroneous on the issue of interest on perpetual bonds.*

5.1. *The learned Pr. CIT failed to appreciate the fact that the interest on perpetual bonds is an allowable expenditure.*

5.2. *The learned Pr. CIT traversed beyond the Show Cause Notice in remanding the issue to the lamed Assessing Officer.*

6. *The learned Pr. CIT erred in holding at the Assessment order is erroneous on the issue of*

addition of Provisions & Contingencies to the Book Profits computed u/s 115JB.

6.1 The learned Pr. CIT failed to appreciate the fact that there seen in the order since The learned Assessing Officer has added the entire Provisions & Contingencies debited to Profit & Loss Account while computing the Book.

6.2. The learned Pr. CIT failed to appreciate the fact that the NPA provision is added back since it is part of the Provisions & Contingences added by the learned Assessing Officer while computing the Book Profit u/s 115JB.

6.3. Without prejudice to the above, the learned Pr. CIT failed to appreciate the fact that the NPA Provisions need not be added to the Book Profits computed u/s 115JB as the same is write off.

6.4 Without prejudice to the above the learned Pr. CIT failed to appreciate the fact that the provisions of section 115JB are not applicable to Nationalized Banks.”

03.In ITA No. 1025/Mum/2021 for A.Y. 2017-18, assessee has raised following grounds of appeal:-

“The Appellant bank filed return of income for the Assessment year 2017-18 on 30-10-2018 declaring Total Income of Nil after adjustment of brought forward loss of ₹138,22,48,808/- under normal provision of the Act. A revised return was

filed on 23.01.2019 declaring nil income after adjustment of brought forward loss of Rs 509,98,17,471/- under normal provisions of the Act. The Assessment u/s 143(3) was completed on 19-02-2019 by making various additions and determining the Total Income at Rs. 2185,34,81,455/- under the normal provisions of the Act and ₹988,47,87,941/- u/s 115JB of the Act. On the basis of the examination of the records, a notice u/s 263 dated 04-02-2020 and 12.03.2020 was issued on the Appellant bank and the same was served on 11.02.2020 and 13.03.2020 respectively. In the said notice, it was alleged that the order of the learned Assessing Officer was erroneous and prejudicial to the interest of the Revenue in respect of the following items:

- 1. Interest on Non Performing Assets.*
- 2. Deferred payment receipt of guarantee commission.*
- 3. Loss on sale of assets to ARC.*
- 4. Interest on Perpetual Bonds.*
- 5. Provision and Contingency (Provision for NPA) treatment while computing Book Profit.*

The Appellant bank gave a detailed reply to the said notice. Disregarding the contentions of the Appellant bank, the learned Pr. CIT passed the impugned order holding that the Assessment



order dated 19-02-2019 is erroneous and prejudicial to the interest of the Revenue due to lack of enquiry under Explanation 2 to section 263 of the Income Tax Act, 1961 and set aside the same, with a direction to the learned Assessing Officer to compute the correct income after affording opportunity of being heard.

Aggrieved by the order of the Pr. CIT, the Appellant is preferring this appeal on the following Grounds:

1. The learned Principal Commissioner of Income-tax (Pr. CIT) erred in passing an order u/s.263 and directing the Assessing Officer to modify the order dated 19-02-2019 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 suit that the order of the Pr. CIT be quashed.

1.3. The learned Pt. 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 the provisions of section 43D r.w.r. 6EA applies to Non Performing Assets (NPA) which are more than 180 days.

2.1. The learned Pr. CIT failed to appreciate the fact that the Rule 6EA applies to all NPAs even if they are less than 180 days.

2.2. The learned Pr CIT failed to appreciate the fact that the interest on NPA are to be offered to tax only on realization.

2.3. Learned Pr. CIT failed to appreciate the fact that once an account is classified as NPA as per RBI norms, then the income on the same is taxable on realization basis only.

3. The learned Pr. CIT erred in holding that the Assessment order is erroneous in respect of offering to income, the guarantee commission.

3.1. The learned Pr. CIT failed to appreciate the fact that the Appellant bank has offered to tax the guarantee commission on cash basis.

3.2. The order of the learned Pr.CIT is based on surmises and conjunctures.



4. *The learned Pr. CIT erred in holding that the Assessment order is erroneous on the issue of loss on sale of assets to ARC.*

4.1. *The order of the learned Pr. CIT is based on surmises and conjunctures.*

4.2. *The learned Pr. CIT failed to appreciate the fact that the Appellant bank did not claim any loss on assets sold to ARC.*

4.3. *The learned Pr. CIT erred in relying on irrelevant records to remand the issue to the learned Assessing Officer.*

5. *The learned Pr. CIT erred in holding that the Assessment order is erroneous on the issue of interest on perpetual bonds.*

5.1. *The learned Pr. CIT failed to appreciate the fact that the interest on perpetual bonds is an allowable expenditure.*

5.2. *The learned Pr. CIT traversed beyond the Show Cause Notice in remanding the issue to the lamed Assessing Officer.*

6. *The learned Pr. CIT erred in holding Broken period Interest i.e., Interest paid at the time of purchase of security should be added back to the Total Income and cannot be claimed as deduction.*

6.1 *The learned Pr. CIT failed to appreciate the fact that Broken Period Interest need not be*

offered to tax as held by the Hon'ble Supreme Court.

6.2. The learned Pr. CIT failed to appreciate the fact that the learned Assessing Officer has adopted one of the possible views.

7. The learned Pr.CIT erred in holding that Assessment order is erroneous on the issue of addition of Provisions & Contingencies (Provision of NPA) to the Book Profits computed u/s. 115JB

7.1 Without prejudice to the above, the learned Pr. CIT failed to appreciate the fact that the NPA Provisions need not be added to the Book Profits computed u/s. 115JB as the same is write off.

7.2. Without prejudice to the above, the learned Pr.CIT failed to appreciate the fact that the provisions of section 115JB are not applicable to Nationalized Banks."

04. We first take the facts for A.Y. 2016-17 and reach at a decision, which would be applied in deciding appeal for A.Y. 2017-18, as the facts in both the cases are identical.

05. The facts for A.Y. 2016-17 shows that assessee, Vijaya bank, is a public sector banking company, it filed its return of income for A.Y. 2016-17 on 14th October, 2016 at a loss of ₹ 439,78,41,996/-. The return was picked up for scrutiny, the assessment



under section 143 (3) of the Act was passed on 21st December, 2018 wherein the total income of the assessee was assessed at ₹ 1701,59,47,399/-.

06. On examination of the records, the learned PCIT found that the assessment order dated 21st December, 2018, passed by the learned Assessing Officer is erroneous insofar as it is prejudicial to the interest of the revenue by issue of show cause notice dated 4th February, 2020. The learned PCIT was of the view that the assessing officer has not made any enquiry with regard to the (1) interest on non-performing assets (2) deferred payment receipt on guarantee commission. He further noted that the assessee has debited loss on sale of assets to an asset reconstruction company and such loss is requires to be added back while computing the taxable income. He also found that interest on perpetual bonds is allowed by the learned Assessing Officer without examining whether the issue of perpetual bonds qualifies as borrowings for the purpose of section 36 (1) (iii) of the Act. The learned PCIT also issued an additional show cause notice on 12th March, 2020 for the reason that in case of the parent bank, Bank Of Baroda, debits to the profit and loss account made towards the provisions and contingencies was added however while computing the book profit Under Section 115 JB of the Act same was not made. Assessee has also made provisions for unascertained liability and provision for

diminution in value of asset which includes provisions for non-performing asset amounting to ₹1459.38 crores which was not added to the book profit. Accordingly, the assessment order passed by the learned Assessing Officer was found to be erroneous and prejudicial to the interest of revenue mentioned in the show cause notice.

07. Assessee submitted its reply on 17 February 2020, stating that deferred payment receipt of guarantee commission has been shown by the assessee and offered for taxation in the year of receipt itself. It was also submitted that assessee did not sell any assets to asset reconstruction company and therefore, debiting of any loss on account of this type of transaction did not arise. With respect to the interest on non-performing asset the assessee submitted that the learned assessing officer has been provided with all the details and after examining the issue he has taken a view therefore the revision cannot be made. With respect to the interest on perpetual bonds it was submitted that the view taken by the learned AO is a possible view and therefore provisions of section 263 cannot be invoked. Even on the merits, it was submitted that there is no error in the order of the learned Assessing Officer with respect to all these issue and therefore, there is no justification for issue of show cause notice under section 263 of the Act.



08. The learned PCIT ultimately held that order of the learned Assessing Officer is erroneous and prejudicial to the interest of revenue to the extent of (1) interest on non-performing assets, (2) deferred payment receipt of guarantee commission, (3) loss on sale of assets to asset reconstruction company, (4) interest on perpetual bonds and (5) the computation of book profit under section 115 JB of the Act. The learned PCIT passed the order under section 263 of the Act on 31st March, 2021.
09. The assessee is aggrieved with that order and therefore is in appeal before us. The learned authorized representative submitted that on identical issue the notice under section 263 of the Act was issued in case of Dena Bank which is also now merged with Bank of Baroda in the learned PCIT held that the order passed by the learned assessing officer is erroneous so far as prejudicial to the interest of the revenue. This order of the learned PCIT travelled up to the coordinate bench in ITA No.1685/Mum/2020, wherein the coordinate bench has allowed the appeal of the assessee holding that the PCIT has exceeded his jurisdiction in exercising the revisionary powers under section 263 of the Act. He specifically referred to the issues at paragraph number 2 of that order wherein the issue with respect to interest on non-performing assets, deferred payment receipt of guarantee commission, loss on sale of assets to assets reconstruction



company and interest paid on perpetual bonds with respect to the normal computation of total income and depreciation in value of investment reduced while computing book profit under section 115 JB of the Act is considered. He therefore submitted that this issue is squarely covered in favour of the assessee. He even otherwise referred to the paper book submitted containing 105 pages.

010. The learned Departmental Representative vehemently supported the order of the learned principal Commissioner of income tax. It was submitted that the assessment order passed by the learned assessing officer suffers from error which are prejudicial to the interest of the revenue and therefore invoking the provisions of explanation 2 to section 263 of the Act, where the learned assessing officer has failed to make adequate enquiries, the order of the learned PCIT is sustainable in law.
011. We have carefully considered the rival contention and perused the order of the learned PCIT. Assessee has also submitted assessment order dated 30th March 2022 passed by the learned Assessing Officer being order giving effect to the order of the learned PCIT passed under section 263 of the Act dated 31st March, 2021. According to that order after consideration of various issues, Id AO made adjustment with respect to the (1) interest on non-performing assets of ₹ 1,070,737,409 and (2)

interest paid on perpetual bonds of ₹ 517,083,079 only. Therefore except these two issues, even after order of the learned PCIT, no addition was made. Therefore, except the above two items there is no error which is prejudicial to the interest of the revenue. Even on the issue of interest on non-performing assets the coordinate bench in ITA No. 1685/Mum/2020, in paragraph number 4 (IB) has categorically held that that the issue is squarely covered in case of the assessee by the decision of the honourable Supreme Court in case of CIT Vs. Vasisth Chay Vyapar Ltd, wherein it has been held that non-performing assets on which no interest was received and possibility of recovery of capital was almost nil, possibility of recovery of interest is also nil, it could not be treated that such income has accrued to the assessee. Therefore, no income in the form of interest on non-performing assets could have been added in the hands of the assessee. With respect to interest on perpetual bonds the coordinate Bench in paragraph number 4 (VII) has also held that the issue is adequately enquired by the AO and further that interest paid on bonds are wholly and exclusively for the purposes of the business and allowable as deduction under section 36 (1) (iii) of the Act. It was further held that the assessee is a nationalized bank and there is no question of assessee investing in perpetual bonds other than for banking businesses. Accordingly, respectfully



following the decision of the coordinate bench, we do not find any reason to sustain the order passed by the principal Commissioner of income tax, Mumbai for A.Y. 2016-17, under section 263 of the Act. Accordingly, we quash the revisionary order.

012. The facts for A.Y. 2017-18 are also similar. In view of our decision for A.Y. 2016-17, the order of the learned PCIT is quashed for AY 2017-18 also.
013. Accordingly, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 13.02.2023.

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

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated:13.02.2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai