

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM

ITA No. 3322/Mum/2023
(Assessment Year: 2005-06)

Dy. Commissioner of Income Tax,
3(4)
Room No.559, Aaykar Bhavan
M.K. Road,
Mumbai-400 020
(Appellant)

Vs.

IDBI Bank Ltd.
7th Floor, Taxation Cell,
IDBI Tower, WTC Complex,
Cuffe Parade, Mumbai-400 005
(Respondent)

PAN No. AABCI8842G

Assessee by : Ms. Priyanka Jain, AR
Revenue by : Shri H.M. Bhatt, DR

Date of hearing: 18.04.2024
Date of pronouncement : 08.05.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No.3322/Mum/2023 is filed by the Dy. Commissioner of Income Tax, Circle 3(4), Mumbai, for A.Y. 2005-06, against the appellate order passed by NFAC [the learned CIT (A)], dated 19th July, 2023, wherein it has been held that for the impugned assessment year 2005-06, the provision of Section 115JB of the Income-tax Act, 1961 (the Act) does not apply to the assessee bank and further, the learned CIT (A) has allowed the interest to the assessee under Section 244A(1A) of the Act. The learned Assessing Officer has raised following grounds of appeal:-

“1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in holding that the provisions of

section 115JB of the Act are not applicable to the assessee-Bank to whom proviso to sub section 2 of 211 of the companies Act 1956 applies?

2. *Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in holding that the amendment to section 115JB of the Income Tax Act, 1961, to bring all the companies (including companies to whom proviso to sub section 2 of 211 of companies Act 1956) in its ambit vide finance Act 2012 w.e.f. 01.04.2013 is not applicable in the assessment year under consideration without appreciating that the said amendment is clarificatory in nature and thus retrospective in effect*

3. *Whether on the facts and in circumstances of the case and in law, the Ld. CITA) was justified in allowing the mandatory interest due u/s 244A(1A) of the Act without appreciating the facts that section 244A(1A) and 153(5) of the Act were added by the legislature on 01.06.2016*

4. *The Appellant craves leave to add, amend and/or vary the grounds of Appeal before or during the course of hearing.”*

02. The brief facts of the case shows that the learned Assessing Officer pursuant to the order of the co-ordinate Bench of assessee for A.Y. 2005-06, in ITA No.2365/Mum/2013, and ITA No.3194/Mum/2013, dated 30th March, 2016, passed the order giving effect to the ITAT order on 19th March, 2020. According to which the revised taxable income of ₹4,04,57,570/-, was computed as per normal provision of the Act. The book profit was computed at ₹263,48,14,640/-. The order giving effect also held to grant interest under Section 244 of the Act as per law.
03. The assessee aggrieved with the above order giving effect raising the ground that (i) the learned Assessing Officer should not have computed the book profit tax under Section 115JB of the Act as those provisions do not apply. (ii) It was further the claim of the assessee that the mandatory interest under Section



244A(1A) of the Act is not granted to the assessee despite the order giving effect is passed beyond the limit prescribed under Section 153(5) of the Act.

04. Before the learned CIT (A) assessee submitted that
- i. the co-ordinate Bench has held that reopening was bad in law and consequent to that the provision of Section 115JB of the Act could not have been applied to the assessee. The learned CIT (A) held that Hon'ble Bombay High Court in case of Union Bank of India 263 taxmann 685 and co-ordinate Bench in assessee's own case for A.Y. 2008-09 and 2011-12 to A.Y. 2013-14 has held that provision of Section 115JB of the Act should not be applicable to banking company governed by provision of Banking Regulation Act, 1949, prior to the amendment made by Finance Act, 2012. Thus, he held that the provisions of Section 115JB of the Act does not apply to the assessee for impugned A.Y. 2005-06.
 - ii. With respect to the claim of the assessee against the ground of mandatory interest under Section 244A(1A) of the Act when the order giving effect was not passed within the time limits specified under Section 153(5) of the Act. He submits that the order of the co-ordinate bench was passed on 30th March, 2016. Whereas the order giving effect was passed on 19th March, 2020. Therefore, the assessee is eligible for additional interest at the rate of 3% under Section 244(1A) of the Act from 1st January, 2017, till receipt of the order dated 19th March, 2022. This order was received on 3rd September, 2021. Accordingly, the appeal of the assessee was allowed on this count by appellate order dated 19th July, 2023.
05. The learned Assessing Officer is aggrieved and has preferred the appeal.
06. The learned Departmental Representative submitted that the provision of Section 115JB of the Act applies to banking company and therefore, the learned Assessing Officer has correctly computed the income of the assessee under that provision. On the issue of granting refund under Section 244A(1A) of the Act, he submitted that such provision are inserted by the Finance Act, 2016 with

effect from 1st July, 2016. The impugned assessment order before the learned CIT (A) is A.Y. 2005-06, therefore, this provision could not have been applied.

07. The learned Authorized Representative submitted that
- i. Provision of Section 115JB of the Act cannot be applied to banking company like assessee, prior to the amendment made by Finance Act, 2012. He submitted that amendment made by the Finance Act, 2012, with effect from 1st April, 2013, has changed the scenario but prior to that provision of Section 115JB of the Act, it is not applicable to the banks held by the Hon'ble Bombay High Court in 263 taxmann.285, which has been relied upon by the learned Commissioner of Income-tax (Appeals). Further, in assessee's own case for earlier year it has been held so.
 - ii. With respect to interest u/s 244A (1A) of the Act, he submitted that as on the date on which the order giving effect was passed the provisions were in the statute book, therefore, assessee is entitled to interest under that Section even for the assessment year 2005-06. He further stated that there is also an amendment with effect from 1st April, 2013, introducing a proviso to that section, which clearly shows that it applies to all the pending proceedings.
08. We have carefully considered the rival contentions and perused the orders of the lower authorities. With respect to the ground no.1 and 2, whether the provision of Section 115JB of the Act is applicable to a banking company has already been decided by the Hon'ble Bombay High Court in case of Union Bank of India 263 taxmann 285, wherein it has been held that prior to its amendment by Finance Act, 2012, the provision of the computation of book profit tax under Section 115JB of the Act would not be applicable to banking company governed by the provision of Banking Regulation of 1949. It is not in dispute that assessee is a banking company. Accordingly, we do not find any infirmity in the order of the learned CIT (A), who relied upon the decision of the Hon'ble Bombay High Court and also the decision of the co-ordinate Bench in assessee's own case. Accordingly, as such impugned assessment year i.e. A.Y. 2005-06, we do not



find any reason to hold that provision of Section 115JB of the Act applies to the assessee company prior to 1st April, 2013. Accordingly, ground Nos., 1 and 2 of the appeal are dismissed.

09. The ground no.3 of the appeal is with respect to allowability of interest u/s 244A(1A) of the Act. Admittedly, in this case, the co-ordinate Bench has passed the order on 30th March, 2016. The order giving effect of such order was passed by the learned Assessing Officer on 19th March, 2021. This order was served to the assessee on 3rd September, 2021, therefore, apparently the assessee is entitled to interest from the date of receipt of the order by learned PCIT till the order is received by the assessee. Therefore, the assessee is held to be eligible for interest from 1st January, 2017 to 3rd September, 2021. The appeal effect order is passed after the introduction of this section and therefore, despite the assessment year being 2005-06, the assessee is eligible for the above interest because of the reason that when appeal effect order was passed, such provision was there on the statute book. . In view of this, we do not find any infirmity in the order of the learned CIT (A). Accordingly, the ground no.3 of the appeal is dismissed.

010. In the result, the appeal filed by the learned Assessing Officer is dismissed.

Order pronounced in the open court on 08.05. 2024.

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 08.05. 2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,



True Copy//

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