

IN THE INCOME TAX APPELLATE TRIBUNAL ‘I’ BENCH, MUMBAI
BEFORE MS. KAVITHA RAJAGOPAL, JM AND SMT. RENU JAUHRI, AM

ITA Nos. 392 to 394/Mum/2024
(Assessment Years: 2009-10 to 2011-12)

Bank of Bahrain & Kuwait B.S.C. Ground Floor, Jolly Chambers Maker-II, 225, Nariman Point, Mumbai	Vs.	The Dy. Commissioner of Income Tax (International Taxation) Circle 1(2)(1), Mumbai
PAN/GIR No. AAAC B 2140 F		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Ninad Patade
Respondent by	:	Shri Anil Sant
Date of Hearing	:	06.06.2024
Date of Pronouncement	:	27.08.2024

ORDER

Per Bench :

These appeals are filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2009-10 to 2011-12.

2. As the facts are identical in all these appeals, we hereby pass a consolidated order in all these appeals by taking ITA No. 392/Mum/2024 as a lead case for the sake of convenience.

ITA No. 392/Mum/2024

3. The solitary issue involved in this appeal is on the issue of addition of provision for non performing assets written off by the assessee while computing the book profits as per section 115JB of the Act.

4. Briefly stated the assessee is a commercial bank headquartered at Bahrain and has two branches in India one at Mumbai and Hyderabad, which is engaged in the normal

banking activities which includes financing of foreign trade and foreign exchange transaction. The assessee for the year under consideration had filed its return of income on 26.09.2009, declaring total income at Rs. Nil and booking profits u/s. 115JB at Rs.1,85,63,851/-. The assessee's case was selected for scrutiny under CASS and notice u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee.

5. The Id. Assessing Officer ('A.O.' for short) passed the draft assessment order on 19.03.2013 u/s. 143(3) r.w.s. 144C(1) of the Act and subsequently the final assessment order u/s. 143(3) r.w.s. 144C(3) of the Act dated 23.04.2013, determining the total income at Rs.1,85,63,851/- to the book profits u/s. 115JB of the Act.

6. The assessee was in appeal before the first appellate authority who vide order dated 27.04.2015 had set aside the issue back to the Id. A.O. The assessee and the Revenue were in appeal challenging the order of the Id. CIT(A) and the tribunal vide order dated 08.08.2019 had held that the Id. CIT(A) does not have power of setting aside the issue to the Id. A.O. and that the said power has been withdrawn w.e.f. 01.06.2001 vide Finance Act, 2001 (2004) of the Act. The Id. CIT(A) then vide order dated 30.11.2023 dismissed the ground of appeal raised by the assessee.

7. Aggrieved the assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

8. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee had claimed deduction of Rs.23.44 crores as provision of assets written back while computing book profit u/s. 115JB of the Act which was out of

the non-performing assets (NPA for short), NP investments and provision for other assets which were reversed and written back during the year under consideration. The Id. AR further stated that the said written provisions were added in the book profit in the respective years and that the reversal of the provision should be reduced while computing book profits u/s. 115JB of the Act during this year. The Id. AR further contended that the Id. A.O. has disallowed the same for the reason that the assessee has failed to furnish evidence to show that the provision which was reversed was added in the computation of book profit in the year in which the said provisions were created. The Id. AR brought our attention to Appendix E at pg. no. 40 of the paper book which contains the details of the provisions of NPA added back in the computation of income while computing book profits as per section 115JB of the Act for A.Ys. 2001-02 to 2009-10 and also the same for non performing investments for all these years. The Id. AR contended that all these details were furnished before the lower authorities which was not considered by the Id. A.O. as well as the Id. CIT(A). The Id. AR prayed that the assessee's grounds to be allowed by duly considering the documentary evidences filed in support of the assessee's claim.

9. The learned Departmental Representative ('Id.DR' for short), on the other hand, controverted the said facts and stated that the Id. CIT(A) has categorically mentioned that the assessee has failed to furnish the relevant documentary evidences to show that the provisions of NPA and NP investments were added in the computation of book profits to the earlier assessment years. The Id. DR relied on the orders of the lower authorities.

10. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has reversed the following provisions made in the earlier years and written back in the profit and loss account which are tabulated herein under:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount in Rs.</i>
1	Provision for non performing assets written back	13,85,83,964/-
2	Provision for non performing investments written back	9,43,45,727/-
3	Provision for other assets written back	14,97,080
	<i>Total</i>	<i>23,44,26,771/-</i>

11. It is inferred that the Id. A.O. and the Id. CIT(A) has not verified the details submitted by the assessee with regard to the written back of the provisions claimed by the assessee during the year under consideration, by reducing the same from the book profits. The 'Appendix E' enclosed in the paper book relates to the year wise breakup of the written back provision which was overlooked by the Id. A.O. and by the Id. CIT(A) and had disallowed the same on the pretext that the assessee has not furnished the relevant details. The Id. CIT(A) in his order has also specified that the assessee has not provided any evidence for A.Ys. 2003-04, 2004-05 and 2007-08 to show that the assessee has added the provisions of NPA to the book profit u/s. 115JB of the Act in these years and only after that the same has been written back in the year under consideration during the assessment proceeding and also during the appellate proceeding the assessee has provided only the copies of the assessment order for A.Ys. 2003-04, 2004-05 and 2007-08 without furnishing the copies of computation of book profits. The Id. CIT(A) has mentioned about only Appendix H to I and J which are merely copies of the assessment order and has not specified about 'Appendix E', which gives the year-wise breakup of the

written back provisions. During the proceeding before us, the Id. AR brought our attention to these details which are enclosed at Appendix E filed in the paper book at pg. no. 40 which corroborates the assessee's claim.

12. It is a settled proposition of law that the benefit of clause (i) of Explanation 1 to section 115JB(2) of the Act will be available only when the assessee in its book profit has increased the amount of provision on bad debts in the year when it was credited for it to reduce the same subsequently when it is written back. The relevant extract of the said provision is cited herein under for ease of reference:

(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the statement of profit and loss), if any such amount is credited to the statement of profit and loss:

***Provided** that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or Explanation below the second proviso to section 115JA, as the case may be; or*

13. The lower authorities have merely rejected the assessee's claim on the ground that the assessee has failed to furnish the details pertaining to its said claim and not for any other reason as to the merits of the claim. We would also draw our support *qua* the decisions relied upon by the assessee in the case of *CIT vs. Himachal Pradesh State Industrial Development Corporation Ltd.* [2015] 51 taxmann.com 216 (HP) where the Hon'ble High Court of Himachal Pradesh has held that when the reserve/provisions created in the year where the assessee has increased the book profit u/s. 115JB of the Act, the assessee is entitled to reduce the amount withdrawn from such reserve if the same is credited to the P & L account in that year. The assessee has also relied on the decision of

the co-ordinate bench in the case of *Escort Finance Ltd. vs. DCIT* (in ITA No.36/Del/2012).

14. On the above factual matrix of the case, we are of the considered view that this issue has to be remanded back to the file of the Id. A.O. for verifying the details submitted by the assessee, pertaining to whether the reserve/provision created has been increased in the book profit as per the proviso to clause (i) of *Explanation* to section 115JB of the Act and then allow the assessee's claim on the merits and in accordance with law. We, therefore, remit all the issues back to the Id. A.O. for fresh consideration of the same. Hence, the grounds raised by the assessee are hereby allowed for statistical purpose.

15. The finding in this appeal applies mutatis mutandis to ITA Nos. 393 & 394/Mum/2024 also.

16. In the result, all the appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 27.08.2024

Sd/-

(Renu Jauhri)

Accountant Member

Mumbai; Dated : 27.08.2024

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)

Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai