

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C”BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA Nos.937 & 938/Bang/2024
Assessment Years: 2013-14 & 2014-15

M/s Canara Bank (Erstwhile Syndicate Bank) FM wing, Head Office, 112, J.C. Road Bangalore 560 002 PAN NO : AAACC6106G	Vs.	DCIT Circle-2(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Ms. Brinda Rameswaran, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	05.09.2024
Date of Pronouncement	:	16.10.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

These appeals filed by the assessee are against the orders both dated 21.3.2024 passed by the ld. CIT(A)/NFAC u/s 250 r.w.s. 254 of the Income Tax Act, 1961 (in short “The Act”) for the AYs 2013-14 & 2014-15. Since the issues in both the appeals are common, these are clubbed together, heard together and disposed of by this common order for the sake of convenience. The grounds raised by the assessee for the Asst. year 2013-14 in ITA No.937/Bang/2024 are taken as base for deciding both the appeals. The Grounds raised are as follows:

1. *“The order of the learned CIT(A) is against the law and facts of the case.*
2. *The order passed by the learned CIT(A) is against the principles of natural justice.*

- 2.1 The learned CIT(A) passed the impugned order without affording an opportunity of hearing through VC, which was specifically requested by the Appellant.*
3. *The learned CIT(A) erred in upholding disallowance u/s.14A of the I.T. Act r.w. Rule 8D, a sum of Rs.59,56,30,000/- being expenditure incurred towards earning exempt income.*
- 3.1 The teamed CIT(A) failed to appreciate the fact that the Appellant Bank does not incur any expenditure for earning the tax exempt income.*
- 3.2 The learned CIT(A) erred in not following the binding decision of the Hon'ble Supreme Court*
4. *The learned CIT(A) erred in upholding the order of learned Assessing Officer with regard to applicability of the provisions of Section 115JB of Income Tax Act, 1961 to the Appellant Bank.*
5. *Without prejudice to the above, the learned CIT(A) erred in adding various items to arrive at the book-profit which are beyond the scope of the section."*

2. Brief facts of the case are that the assessee is a Public Sector Bank carrying on the business of banking. The original Assessment order was passed in the name of M/S. Syndicate Bank, which was then existed. The said Bank was merged with M/s. Canara Bank w.e.f. 01-04.2020 vide Government of India Notification No. G.S.R. 155(E) dated 4th March, 2020. Hence, these appeals are filed with the cause title of Canara Bank.

2.1 For the A.Y.2013-14, the return of income was filed by the assessee on 29.11.2013, declaring the total loss of Rs.117,03,08,857/-. Subsequently, the assessee filed a revised Return of Income on 11.10.2014 reducing the loss to Rs.52,10,80,024/-. Thereafter the case was selected for scrutiny and accordingly the assessment order under section 143(3) was passed on 09.02.2015 by the learned Assessing Officer by making various additions / disallowances and assessed the total income at Rs.3217,90,18,430/-, and computed the Book Profit of Rs. 3797,21,59,420/- under the provisions of section 115JB of the Act.

2.2 The assessee Bank preferred an appeal before the CIT (Appeals) against the said original Order of assessment. The Id. CIT(Appeals), Mangalore vide his appellate order dated 26.03.2018, partly allowed the appeal.

2.3 The aforesaid order of CIT (Appeals), Mangalore was challenged before the ITAT by both the assessee Bank and the Revenue. The ITAT, Bangalore, vide its order dated 27.12.2021 for Assessment Year 2013-14, arising out of ITA Nos. 236 & 1884/Bang/2018 set-aside and restored back the following issues to the file of CIT(Appeals) for fresh adjudication, -

- Disallowance under section 14A
- Applicability of MAT provisions under section 115JB
- Additions made in computation of Book Profit under section 115JB

2.4 The learned CIT(A)/ NFAC vide the impugned order dated 21-03-2024 upheld the order of the Assessing Officer on the aforesaid issues. Aggrieved by the order of the Id. CIT(A)/NFAC, the Assessee Bank filed this appeal before us.

3. The first ground of appeal raised by the assessee bank is general in nature, which in our opinion does not require any adjudication.

4. The second ground is a technical ground which was not pressed at the time of hearing by the Id. A.R. of the assessee and hence this ground is dismissed as not pressed.

5. Ground No.3 is with regard to applicability of section 14A of the Act.

5.1 Before us the ld. AR of the assessee submitted that the ld. CIT(A) erred in confirming the view taken by the AO by observing that the AO has correctly followed the procedure for invoking the provisions of section 14A by way of expressly recording his satisfaction and thereafter proceeded to work out the quantum of disallowance as per the method prescribed under Rule 8D and the entire disallowance of Rs.59.56 Crores made by AO on this account was sustained. The appeal of the assessee was dismissed by ld. CIT(A) on this ground.

5.2 The ld. DR on the other hand intensely supported the order of the ld. CIT(A).

6. We have heard both the parties and perused the materials available on record. We are of the opinion that similar issue came for consideration before this Tribunal in assessee's own case in ITA Nos.1219/Bang/2019 & ITA No.186/PAN/2019 dated 8.8.2024, wherein the Tribunal held as under:

“14. After hearing both the parties, we are of the opinion that similar issue came for consideration before this Tribunal in case of Canara Bank Vs. DCIT in ITA Nos.390 & 501/Bang/2023 for the assessment years 2016-17 & 2017-18, the Tribunal vide order dated 25.10.2023 held as under:

“6. Considering rival submissions, we note that this issue has been settled by the Hon'ble jurisdictional High Court in assessee's own case for AY 2011-12 & 2012-13 in ITA No.258/2020 dated 8.2.2021 observing as under:-

“ 4. Even though four substantial questions of law are raised in the appeal Memorandum cited supra, among them, substantial question of law Nos.2 & 4 are covered by the judgment and are answered by the co-ordinate bench of this court vide judgment dated 31.01.2020 in ITA No.481/2014. Paras 8 to 10 of the said judgment dated 31.01.2020 passed in the aforesaid case, reads as under:

"8. We have considered the submissions made by learned counsel for the parties and have perused the record. Before proceeding further, it is apposite to take note of Section 14A of the Act:

Section 14A (1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-Section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act.

Provided that nothing contained in this Section shall empower the Assessing Officer either to reassess under Section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under Section 154, for any assessment year beginning on or before the 1st day of April 2001.

9. From perusal of Section 14A of the Act, it is evident that for the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of the expenditure incurred by the assessee in relation of the income which does not form part of his total income under the Act. The expenditure, the return of investment and cost of requisition are distinct concepts. Therefore the word 'incurred' in Section 14A of the Act have to be read in the context of the scheme of the Act and if so read, it is clear that it disallows certain expenditures incurred to earn exempt income from being deducted from other incomes which is includable in the total income for the purposes of chargeability to the Tax. It is equally well settled that expenditure is a pay out. In order to attract applicability of section 14A of the Act, there has to be a pay out and return of investment or a pay back is not such a debit item. [See: WALFORT SHARE AND STOCK BROKERS (P) LTD SUPRA as well as M.4XOP INVESTMENTS LTD SUPRA]. In the instant case, the assessee has admittedly not incurred any expenditure. This case pertains to income on dividend, which by no stretch of imagination can be treated to be an expenditure to attract the provisions of Section 14A of the Act. In view of aforesaid enunciation of law by the Supreme Court, the first substantial question of law framed by this court is answered in favour of the assessee and against the revenue.

10. Learned counsel for parties, have fairly admitted that in case this court frames a substantial question of law that whether provisions of Section 115JA apply to the Banking Companies are not the remaining substantial questions of law, would be reduced otiose. This

court has already framed a substantial question of law in this regard today. This court by an order passed on 16.01.2020 passed in ITA No.13/2014 has already held that the provisions of Section 11514 do not apply to the banking companies. Therefore, the substantial questions of law Nos_3, 4 and 5 and substantial question of law framed in ITA 99/2010 are rendered academic and need not be answered. So far as substantial; question of law No.2 in ITA No.97/2010 is concerned, the same is squarely covered by the decision of the Supreme Court in 'CIT VS. ESSAR TELEHOLOINGS LTD.',(2018) 401 ITR 445, wherein it has been held that provisions of Section 114A read with rule 8D of the Income Tax Rules are prospective in nature and cannot be applied to any assessment year prior to Assessment Year 2008-09. Accordingly, the aforesaid substantial question of law is answered against the revenue and in favour of the assessee."

5. *In this regard, a memo is also filed by the learned counsel for the appellant, which reads as under:*

"MEMO ON BEHALF OF THE APPELLANT

The appellant respectfully submits that in view of the substantial questions of law 2 and 4 having been covered in favour of the assessee in the earlier orders in assessee's own case, it is submitted that substantial questions of law 1 and 3 become academic and need not be answered by this Hon'ble Court.

Therefore, it is most humbly prayed that this Hon'ble Court may be pleased to take the memo on record and pass appropriate orders in the interests of justice and equity."

6. *As per the Memo, question Nos.1 & 3 would only be treated as academic and hence, not answered. in view of the same, in terms of the order dated 31.01.2020, the substantial questions of law Nos.2 & 4 are answered in favour of the assessee and in terms of the aforesaid judgment."*

6.1 Respectfully following the above judgment, we decide the issue in the above terms of the judgment. The ld. DR has submitted that the Hon'ble Apex court has admitted the SLP filed by the revenue but the status of the same could not be furnished by the ld. DR, accordingly, we are bound by the order of the Jurisdictional High Court ."

14.1 In view of this, we dismiss the above ground taken by the revenue on disallowance u/s 14A of the Act."

6.1 In view of the above order of this Tribunal cited (supra), taking a consistent view, we allow this ground taken by the assessee.

7. Ground No.4 of the appeal is with regard to the applicability of the provisions of section 115JB of the Act.

7.1 The A.R of the assessee submitted that the ld. CIT(A) erred in concurring the view taken by the AO by observing that since the assessee bank is an Indian company for the purposes of I.T. Act, 1961 and therefore liable to pay Minimum Alternate Tax on the book profits, as per the provisions of section 115JB of the Act, for the year under consideration. Accordingly, ld. CIT(A) dismissed the ground of appeal of the assessee on this issue.

7.2 The ld. DR on the other hand vehemently supported the order of the ld. CIT(A).

8. We have heard both the parties and perused the materials available on record. We are of the opinion that similar issue came for consideration before this Tribunal in assessee's own case in ITA Nos.1219/Bang/2019 & ITA No.186/PAN/2019 dated 8.8.2024, wherein the Tribunal held as under:

“9. After hearing both the parties, we are of the opinion that similar issue came for consideration in the case of Canara Bank in ITA Nos.391 & 392/Bang/2023 for the assessment year 2019-20. The Tribunal vide order dated 22.12.2023 held as under:

*“11. **Ground No.4** raised by assessee is on applicability of provisions of section 115JB of the Act.*

The Ld.AR submitted that, the assessee does not fall within definition of banking company as defined under Companies Act, 1956 and therefore it is not covered by proviso to section 211(2) of the Companies Act. The Ld. AR thus submitted that provisions of s. 115JB are not applicable to assessee. In support of this submission, he placed reliance on decision of Hon'ble Delhi High Court in the case of CIT v Punjab National Bank Ltd. (successor of erstwhile Oriental Bank of Commerce) in ITA 594/2023 by order dated 20/10/2023, wherein the question of law considered by the court is proposed in question (e) has been dismissed. The said order of Hon'ble Delhi High Court in the case of CIT v Punjab National Bank Ltd. (successor of erstwhile Oriental Bank of Commerce) (supra) is placed at page 35-37 of the PB.

The Ld.AR further relied on decision of Hon'ble Delhi Tribunal in the case of Oriental Bank of Commerce v. ACIT reported in [2022] TIOL 331 ITAT-DEL. The Ld.AR submitted that, the provisions of section 115JB, as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to a banking company. He submitted that coordinate Bench of Delhi Tribunal considered this issue by observing as under:-

“51. This issue is no longer res-judicata following judgments of the tribunals and the High Courts wherein it is categorically held that MAT provision u/s 115JB will not apply to a Banking Company:

- Canara Bank vs JCIT, LTU in ITA No. 530/Bng/2010 & other dtd. 30.03.2016 = 2016-TIOL-1120-HC-P&H-IT*
- M/s. Canara Bank vs CIT(LTU) In ITA No. 305/Bang/2011 dtd. 18.06.2012*
- Krung Thai Bank PCI vs Joint Director of Income Tax (ITAT) (Mumbai) in ITA No.3390/Mum/09 dtd. 30.09.2010 reported in (2010) 45 DTR 218*
- Union Bank of India vs ACIT, LTU (ITAT) (Mumbai) in ITA Nos.4702 to 4706/Mum/2010 dtd. 30.06.2011*
- Indian Bank vs Addl. CIT (ITAT) (Chennai) in ITA No.469/Mds/2010 dtd. 03.08.2011*
- Union Bank of India (ITAT Mumbai) in ITA Nos. 4155 to 4161 of 2011 dtd. 27.03.2012*

- Oriental Insurance Co. Ltd. vs. DCIT I ITA No.447/2015 dtd 30.08.2017 = 2017-TIOL-1714-HC-DEL-IT*
- CIT vs Union Bank of India (2019) 308 CTR 797 (Bom) HC*

52. In the above referred judgment of the Bombay High Court, at relevant page 8, para no.11 (paper book page no.13) the court has held as under:

"This legal dichotomy emerging from the provisions of subsection (2) of Section 115JB particularly having regard to the first proviso contained therein in case of banking company, would convince us that machinery provision provided in sub- section (2) of section 115JB of the Act, would be rendered wholly unworkable in such a situation. In a well known judgment the Supreme Court in case of Commissioner of Income-Tax, Bangalore vs B.C. Shrinivasa Setty, Vo. 128 ITR 294 = 2002-TIOL-587-SC-IT-LB, had observed that in the Income Tax Act, a charging section and the computing provisions together constitute an integrated code. In a case where the computation provision cannot apply, it would be evident that such a case was not intended to fall within the charging section. It was a case of charging a partnership firm for transfer of a capital asset in the nature of goodwill. The Supreme Court was of the opinion that it would not be possible to envisage a cost of acquisition of goodwill. Since computation of capital gain cannot be done without ascertaining the cost of acquisition, it was

held that no capital gain tax can be levied. " 53. Concluded at page 12 para 21 as under:

"27. In the result, we hold that sub-section 115JB as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to a banking company. We answer the question No. 2 in favour of the assessee and against the revenue. In view of this, question of correctness of the order of rectification passed by the Assessing Officer becomes unimportant. Question No. 1 is therefore not answered. All the appeals are dismissed."

54. For the AY 2013-14 and onwards, vide ground no. ground no. 3 of ITA no. 1582/Del/2Q17 (AY 13-14), ITA no. 1583/Del/2017 (AY 14-15) and ground no. 6 of ITA no. 1199/Del/2018 (AY 15-16), the assessee has contended that provisions of section 115JB (MAT) will not apply as the assessee is a Nationalized Bank under the Banking Company (Acquisition and Transfer of Undertaking) Act, 1980.

55. The provisions of section 115JB as amended by the Finance Act, 2012 w.e.f. 1.4.2013, inserting clause (a) and clause (b) in sub-section (2) to section 15JB are as under:

"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 incometax at the rate of [eighteen and one-half per cent]].

(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 profit and loss account for the relevant previous year in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956 (1 of 1956); or

(b) being a company, to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 (1 of 1956) is applicable, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of the Act governing such company:]

Provided that while preparing the annual accounts including profit and loss account,- (i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including profit and loss account;

(iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this

Act,-

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including profit and loss account;

(iii) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year. "

56. Thus, the understanding of the above amendment to section 115JB is where a company which are not required u/s 211 (129) of the Companies Act to prepare their P&L account in accordance with Schedule - VI of the Companies Act, 1956 profit & loss account prepared in accordance with the provisions of their Regulatory Acts shall be taken as a basis for computing the book profit u/s 115JB.

57. The assessee's contentions for non-applicability of 115JB provisions are:

"(i) It is a case of Nationalized Bank, under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980.

(ii) Assessee is not a company incorporated under the Companies Act, 1956, nor recognized under section 3 of the Companies Act.

(iii) The second proviso to sub-section (1) of section 129 (earlier provision 211) of the Companies Act, 2013 is not applicable to the assessee.

(iv) Under section 11 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 provides that "for the purposes of the Income-tax Act, 1961, every corresponding new bank shall be deemed to be Indian company and a company in which public is substantially interested".

(v) It is settled principle of law where deeming fiction is created by the legislature it has to be confined to the purpose for which it is created. CIT, Panji vs Dempo Company Limited reported in (2016) 74 TAXMAN.com 15 (SC) = 2016-TIOL-164-SC-IT. Therefore, the Income-tax Act must recognize such banking company for the purpose section 115JB in order to make the provisions applicable.

(vi) When the charging section and the computing provision together would constitute an integrated code. In case charging section does not apply then the computation section fails. CIT vs B C Shrinivas Setty 128 ITR 294 = 2002-TIOL-587-SC-IT-LB."

58. However, the plea of the assessee with respect to nonapplicability of section 115JB to the Banking Companies was rejected by the ITAT Mumbai "B" Bench in ITA No. 1767/Mum/2019

for the A.Y. 2015-16 in the case of Bank of India vs ACIT Mumbai vide order dated 11th December, 2020.

59. There is no jurisdictional High Court decision or for that matter any other High Court decision against the assessee. In view of the fact that two uses are possible, the view that favours the assessee may kindly be considered, more so in the case of a Nationalized Bank as held by the Hon'ble Supreme Court in the case of CIT vs Vegetable Products Ltd. 88 ITR 192 = 2002TIOL-574-SC-IT-LB."

12. The Ld. DR though could not controvert the above observation by Hon'ble Delhi Tribunal in the above own case, placed reliance on the decision of Ld.CIT(A).

13. We have perused submissions advanced by both sides in light of record placed before us. We note that decision of Hon'ble Delhi Tribunal in Oriental Bank (supra) has been upheld by Hon'ble Delhi High Court wherein Hon'ble High Court has categorically observed that the revenue in case of Punjab National Bank did not raise this issue which are identical to facts of the present assessee before us.

In view of the same, Ground No.4 raised by the assessee deserves to be allowed."

9.1 In view of the above order of the Tribunal cited (supra), taking a consistent view, we allow this ground taken by the assessee."

8.1 Further, similar issue came for consideration recently before the ITAT, 'Special Bench' Mumbai in the case of Union Bank of India Vs. DCIT in ITA No. 424/Mum/2020 for the Asst. year 2015-16 and Central Bank of India Vs. ACIT in ITA No. 3740/Mum/2018 for the Asst year 2013-14, in which the Special Bench of ITAT vide Order dated 06/09/2024 held as under:

DECISION

39. We have heard both the parties and also perused the relevant material referred to before us and the various provisions of the relevant Acts cited which are relevant for adjudication of the issue before us.

40. The question which has been referred to the Special Bench is whether the requirement of sub-section (2) of 115JB is fulfilled in the present case of the assessee. Sub-section (1) of Section 115JB mandates charge of income tax based on book profits subject to fulfillment of certain conditions and also provides the rate on which such tax shall be charged. The Section starts with non-obstante clause

and therefore, it is a departure from normal charge of tax on the total income of the company. Sub-section (2) is the computation provision dealing with the manner in which such book profits are to be computed. Upto A.Y.2012-13, subsection (2) of Section 115JB applied only to such companies which were required to prepare its profit and loss account in accordance with part II & III of Schedule VI to the Companies Act ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 34 1956. The assessee bank is required to prepare its profit and loss account in accordance with Section 52 r.w.s. 29 of the Banking Regulation Act and not as per the Companies Act. Earlier in the case of the assessee it has been settled by the Hon'ble Jurisdictional High Court that provision of Section 115JB has no application to its case. Now after the amendment w.e.f. A.Y.2013- 14, Sub-section (2) has been amended to bring into the ambit of Section 115JB, those companies to which second proviso to subsection (1) of Section 129 of the Companies Act is applicable, who are required to prepare its statement of profit and loss account in accordance with provisions of the Act governing such company. For the sake of ready reference the amended subsection (2) of Section 115JB is again reproduced hereunder:- (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 subsection (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: Provided that while preparing the annual accounts including statement of profit and loss,— (i) the accounting policies; ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 35 (ii) the accounting standards adopted for preparing such accounts including statement of profit and loss; (iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including statement of profit and loss and laid before the company at its annual general meeting in accordance with the provisions of section 129 of the Companies Act, 2013 (18 of 2013): Provided further that where the company has adopted or adopts the financial year under the Companies Act, 2013 (18 of 2013), which is different from the previous year under this Act,— (i) the accounting policies; (ii) the accounting standards adopted for preparing such accounts including statement of profit and loss; (iii) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including statement of profit and loss for such financial year or part of such financial year falling within the relevant previous year.

41. *In so far as Clause (a), the same applies to a case of a company other than referred to in Clause (b). According to clause (a), for the purpose of Section 115JB the company has to prepare its profit and loss account for the relevant previous year in accordance with the Companies Act, 2013 and the First proviso to sub-section (2) requires that while preparing the accounts including the profit and loss account, the accounting policies, the accounting standards and the method and rates adopted for the purpose of preparing such accounts ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 36 including the profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of Section 129 of the Companies Act, 2013. Since assessee bank has to prepare its accounts in accordance with the provisions contained in Section 51 r.w.s. 29 of the BR Act, therefore, Schedule III of the Companies Act is not applicable. Thus, Clause (a) of Section 115JB (2), the computation provision, will not apply and this matter has attained finality in the case of the assessee by the Hon'ble Jurisdictional High Court in the case of the assessee (cited supra).*

42. *Now for Clause (b), following conditions need to be satisfied for applying section 115JB in the case of a company:- i. it applies to a company to which the second proviso to subsection (1) of section 129 of the Companies Act, 2013 is applicable; ii. once this condition is fulfilled, it requires such assessee for the purpose of this section to prepare its profit and loss account in accordance with the provisions of the Act governing such company.*

43. *Since 115JB is applicable to the company to which second proviso to Section 129(1) applies, therefore, it would be relevant to quote Section 129 of the Companies Act which 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 ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 37 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 subsection 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."

44. The second proviso applies to any insurance company, 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. In so far as the present ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 38 case is concerned, one has to consider whether the assessee could be regarded as a 'banking company' for the purposes of section 129 of the Companies Act, 2013).

45. Now whether the assessee bank can be termed as a company within the meaning of the Companies Act, 2013, first of all, Section 115JB(2) is applicable to every assessee „being a company". The company has been defined in Section 2(17) of the Income Tax Act which we have already reproduced in para 22 above. Thus, the company means any Indian company. Indian company has been defined in Section 2(26) (incorporated in Para 23 of the order) which defines „Indian company" means company formed and registered under the Companies Act. Thus, the company for the purpose of the Income Tax Act is a company which is formed and registered under the Companies Act. Section 2(9) of the Companies Act, 2013, a banking company has been defined to mean a banking company as defined in section 5(c) of the BR Act). Section 5(c) of the BR Act defines a „banking company" as under: "(c) "banking company" means any company which transacts the business of banking in India" Therefore, for an entity to qualify as a banking company it should first of all, be a company' and secondly the said company should transact the business of banking in India.

46. The expression "company" has been defined in section 5(d) of the BR Act as under: ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 39 "(d) "company" means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956); and includes a foreign company within the meaning of section 591 of that Act;"

47. Therefore, in so far as is relevant, the entity has to be a company as defined in section 3 of the Companies Act, 1956 (Now 2013) to be regarded as a banking company. Section 3(1)(i) of the Companies Act, defines a 'company' as under: "(i) "company" means a company formed and registered under this Act or an existing company as defined in clause (ii)"

48. *Therefore, it is sine-qua-non that for an entity to qualify as a company it must either be a company formed and registered under the Companies Act or it should be an existing company as defined in sub-clause (ii) thereof. Since the Assessee is not formed and registered under the Companies Act, 1956, albeit came into existence by a separate Act of Parliament, that is, „Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970”, therefore, it does not fall in the first part of the said section.*

49. *Further, the expression "existing company has been defined in Section 3(1)(ii) to mean as under: "(ii) "existing company" means a company formed and registered under any of the previous companies laws specified below :- (a) any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866), and repealed by that Act; ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 40 (b) the Indian Companies Act, 1866 (10 of 1866); (c) the Indian Companies Act, 1882 (6 of 1882); (d) the Indian Companies Act, 1913 (7 of 1913); (e) the Registration of Transferred Companies Ordinance, 1942 (54 of 1942); and (f) any law corresponding to any of the Acts or the Ordinance aforesaid and in force - (1) in the merged territories or in a Part B States (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (7 of 1913); or (2) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), insofar as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu & Kashmir) Act, 1968 (25 of 1968), insofar as other corporations are concerned; and (3) the Portuguese Commercial Code, insofar as it relates to sociedades anonimas";"*

50. *The assessee bank was neither formed nor registered under the Companies Act, 1956; nor it is in existing company as per the above definition. Once it is not a company under the Companies Act, then the first condition referred to in clause (b) of Section 115JB(2) is not fulfilled, and consequently second proviso below Section 129(1) of the Companies Act is also not applicable.*

51. *The main crux of the department is that since assessee bank has come into existence by the „Acquisition Act” and Section 11 thereof states that for the purpose of Income Tax Act, ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 41 every corresponding new bank shall be deemed to be an „Indian company” and the company in which the public are „substantially interested’ and since in Section 2(17) of the Income Tax Act, the „company” has been defined as any Indian company therefore, the provisions of the Income Tax Act would apply because Section 2(26) of the Act defines „Indian company” means the company formed and*

registered under the Companies Act and therefore, it is deemed to be a company under the Companies Act.

52. Section 11 of the Acquisition Act states that "For the purposes of Income-tax Act, 1961 (43 of 1961), every corresponding new bank shall be deemed to be an Indian company and a company in which the public are substantially interested". Therefore, the said deeming fiction is created only for the purposes of the Income-tax Act. Further, for the purposes of the said Act, it treats every corresponding new bank to be an Indian company and also a company in which the public are substantially interested.

53. First of all, deeming an entity to be an Indian Company or a company in which public are substantially interested for the purposes of the Income-tax Act would not ipso facto make such entity as a 'company' for the purposes of the Companies Act, 2013, unless the conditions specified in Section 3 thereof are fulfilled. There is no provision to deem a nationalised bank to be ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 42 a company for the purposes of Section 3 of the Companies Act, 1956.

54. As explained in the foregoing paragraphs, Section 2(17) of the income Tax Act r.w.s. 2(26) which defines „company“ to mean a company formed and registered under the Companies Act, 1956, does not meet the requirement of being a company in the case of assessee bank, because the Indian company has to be formed and registered under the Companies Act. Notwithstanding that Section 11 of the Acquisition Act deems assessee bank to be a company for the purpose of Income Tax Act, but that does not lead to an inference that merely regarded as a company for the purpose of the Income Tax Act it is also Company registered under the Companies Act. The fiction created by Section 11 of the Acquisition Act, does not imply that the assessee bank would also become a company for the purpose of the Companies Act for which Clause (b) of Sub-Section 2 of Section 115JB is applicable.

55. In the earlier part of the order, we have already noted that by the Acquisition Act, the banking business of the existing bank was transferred from Union Bank of India Ltd to The Union Bank of India. The earlier entity, i.e., Union Bank of India Ltd. was a company under the earlier Companies Act, however, that company as a whole was not taken over or acquired but only banking business was acquired by the Acquisition Act. That is the reason why Union Bank of India Ltd. still existed at the point of acquisition and continues till now and the shareholders of ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 43 Union Bank of India Ltd. were paid compensation as a consideration for acquiring the banking business. It was by the Acquisition Act that these banks were nationalized and the banking business was acquired from the erstwhile banking companies. These new acquiring banks including Union Bank

of India is neither registered under the Companies Act, 2013 nor under any other previous company law. Already the Hon'ble Supreme Court in the case of Rustom Cavasjee Cooper v. Union of India (supra) as noted above, the Hon'ble Supreme Court had held that only undertaking was acquired for the banking companies acquisition and transfer of invoking ordinance which was promulgated on 19/06/1969, which culminated into the Act of Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. Thus, assessee cannot be treated as a company under the Companies Act, because it was never registered under the Companies Act. Ergo, the deeming fiction by way of Section 11 of the Acquisition Act has to be read purely in the context for the purpose of Income Tax Act where the corresponding new bank have been deemed to be an Indian Company and a company in which public are substantially interested. This deeming section cannot be extended to a company registered under the Companies Act to which alone Section 115JB is applicable.

*56. Thus, we hold that Section 11 of the Acquisition Act which deals a corresponding new bank treated as Indian company for the purpose of Income Tax, however, Clause (b) in Sub-Section 2 to Section 115JB does not permit treatment of such bank as a company for the purpose of the said clause, because it should be ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 44 company to which second proviso to sub-section (1) to Section 129 of the Companies Act is applicable. The said proviso has no application to the corresponding new bank as it is not a banking company for the purpose of the said provision. The expression "company" used in section 115JB(2)(b) is to be inferred to be company under the Companies Act and not to an entity which is deemed by a fiction to be a company for the purpose of the Income Tax Act. 57. Before us, ld. Counsel has given various references under the Income Tax Act itself where the corresponding new bank and a banking company have been treated separate and independent from each other for which our reference was also drawn to Section 36(1)(viii) & 72A. Apart from that, it is noticed that, Section 194A(1) of the Act which provides that if any specified person is responsible for paying to a resident any income by way of interest is obliged to deduct tax at source, however, Section 194A(3) provides that Section 194A(1) shall not apply if the payment has been made to certain entities. Clause (iii) of subsection (3) of section 194A, deals with such entities. The said clause reads as under:-
iii) to such income credited or paid to- (a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or (b) any financial corporation established by or under a Central, State or Provincial Act, or ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 45 (c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or (d) the Unit Trust of India established under the Unit Trust of*

India Act, 1963 (52 of 1963), or (e) any company or co-operative society carrying on the business of insurance, or (f) such other institution, association or body [or class of institutions, associations or bodies] which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette: [Provided that no notification under this sub-clause shall be issued on or after the 1st day of April, 2020;]

57. *The aforesaid clause (f) provides that if Central Government notifies any such entity then TDS is not to be deducted. It is very relevant to note that at the time of Acquisition Act was enacted, Central Government had issued a Notification No. SO 710 dated 16/02/1970 [1970] [Reported in 75 ITR (Stat) 106] which reads as under:-*

58. *Income-tax Act, 1961: Notification under sec. 194A(3)(iii)(f) Notification No. S. O. 710, dated February 16, 1970. (1) In pursuance of sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notify with effect from the 19th July, 1969, the following banks for the purposes of the said sub-clause:-*

1. *Indian Overseas Bank, 151, Mount Road, Madras*
2. *Indian Bank, Indian Chamber Building, Madras-1. ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 46*
3. *Allahabad Bank, 14, India Exchange Place, Calcutta-1.*
4. *Dena Bank, Devkaran Nanjee Building, 17, Horniman Circle, Fort, Bombay-1.*
5. *Canara Bank, 112, Jayachamarajendra Road, Bangalore-1.*
6. *Union Bank of India, 66/80, Apollo Street, Fort, Bombay-1.*
7. *United Commercial Bank, 10, Brabourne Road, Calcutta-1.*
8. *Bank of Baroda, 3, Walchand Hirachand Marg, Bombay-1.*
9. *Punjab National Bank, Parliament Street, New Delhi-1.*
10. *Bank of India, 70/80 Mahatma Gandhi Road, Bombay-1.*
11. *Central Bank of India, Mahatma Gandhi Road, Bombay-1.*
12. *United Bank of India, 4, Narendra Chandra Datta Srani (Clive Ghat Street), Calcutta-1.*
13. *Bank of Maharashtra, 1177 Peth, Poona-2.*
14. *Syndicate Bank, Manipal, Mysore State, Mysore*

59. *Thus, the aforesaid notification read with provision of Section 194A(3), makes it clear that even Government of India considers the above entities separate and distinct from banking companies. Once under the Income Tax Act, Legislature itself has made a distinction for the aforesaid banks including the assessee are not covered as banking company, then, this further buttresses the point that these banks are separate and distinct from other banking companies.*

60. Accordingly, the question referred to Special Bench is decided in favour of the assessee banks that clause (b) to sub section (2) of section 115JB of the Income-tax Act inserted by Finance Act, 2012 w.e.f. 1-4-2013, that is, from assessment year ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 47 2013-14 onwards, are not applicable to the banks constituted as 'corresponding new bank' in terms of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and therefore, the provision of Section 115JB cannot be applied and consequently, the tax on book profits (MAT) are not applicable to such banks."

8.2 In view of the above orders of the Tribunal cited (supra), taking a consistent view, we allow this ground taken by the assessee.

9. Ground No.5 is the consequential ground with regard to adjustments to book profits and computation of income u/s 115JB of the Act.

9.1 Since the ground No.4 of the assessee's appeal deciding on the issue of applicability of provisions of section 115JB of the Act is already allowed in favour of the assessee bank by following the earlier order of this Tribunal cited (supra) as well as respectfully following the decision of the ITAT, 'Special Bench' Mumbai, the ground no.5 of the assessee's appeal becomes infructuous.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 16th Oct, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 16th Oct, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**