

**IN THE INCOME-TAX APPELLATE TRIBUNAL “B” BENCH,  
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 928/MUM/2023  
(A.Y. 2016-17)**

Bank of India 8 <sup>th</sup> Floor, Taxation Department, Star House, C-5, G Block, Bandra- Kurla Complex, Bandra(E), Mumbai-400051	v/s. बनाम	DCIT-2(1)(2), Mumbai Aaykar Bhavan, M.K. Road, Mumbai-400020
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACB0462C</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

Appellant by :	Shri. C. Naresh
Respondent by :	Shri Kailash C. Kanojiya

Date of Hearing	17.10.2024
Date of Pronouncement	29.11.2024

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 31.01.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2016-17.

2. The assessee has raised following grounds of appeal:

*“1. On the facts and in the circumstances of the case and in law, the learned Deputy Commissioner of income-Tax 2(1)(2) (herein after referred to as "DCIT") has erred in disallowing provision for leave encashment of Rs.47,92,48,914 under clause (f) of Section 438 of the Act on the basis that the same is allowable only on actual payment basis and the Hon'ble CIT(A) has erred in confirming the same. The Appellant Bank prays that the provision for leave encashment of Rs.47,92,48,882 be allowed as a deduction on accrual basis being an ascertained trading liability and the learned DCIT be directed to reduce the total income under the Normal Provisions of the Act accordingly.  
2 On the facts and in the circumstances of the case and in law, the learned DCIT has erred in invoking the provisions of Section 115JB of the Act for determining the tax liability for the year under appeal and the Hon'ble CIT(A) has erred in confirming the same. The learned DCIT be directed not to invoke the provisions of Section 115JB of the Act in the case of the Appellant Bank for the year under appeal and determine the total income and the income-tax thereon under the normal provisions of the Act only  
3. The Appellant Bank reserves the right to add, alter, amend or delete any of the ground/s before or during the course of the hearing”*

3. The brief facts of the case are that the assessee, a public sector bank, filed its return declaring total loss of Rs. 828,59,92,098/- under the normal provisions of the Act and book loss of Rs. 8106,24,94,032/- u/s 115JB of the Act. Subsequently, a revised return was filed on 30.03.2018 declaring loss of Rs. 489,28,00,385/- under the normal provisions and book loss of Rs. 8106,50,58,598/- u/s 115JB of the Act. The case was selected for scrutiny and assessment was completed u/s 143(3) of the Act on 14.03.2019 wherein various disallowance/additions amounting to Rs. 7575,24,04,487/- were made and the income was determined at Rs. 6516,76,89,047/- under the normal provisions. Also, various additions aggregating to Rs. 11973,94,22,456/- were made while determining book profit u/s 115JB at Rs. 3867,43,63,858/-.



4. Ld. CIT(A) passed an order allowing part relief to the assessee on various grounds.

5. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before us on two grounds.

6. The first ground relates to disallowance of provision for leave encashment of Rs. 47,92,48,914/- u/s 43B(f) of the Act. It was case of the AO that provision for leave encashment is allowable only on actual payment basis and his view was upheld by the Ld. CIT(A). Before us, Ld. AR argued that the provision for leave encashment has been made on actuarial basis. A copy of actuarial valuation report has also been filed before us. Accordingly, it was argued that the assessee is entitled to claim deduction in respect of provision for leave encashment. Ld. AR, further, placed reliance on the decision of the co-ordinate bench in the case of **Aditya Birla Info Ltd. v/s ACIT** in which the co-ordinate bench while deciding the appeal in **ITA No. 4220/Mum/2015** for AY 2010-11 has decided the issue in favour of the assessee. On the other hand, Ld. DR relied on the Hon'ble Apex Court's decision in the case of **Exide Industries** wherein the constitutional validity of section 43B(f) was examined and upheld.

7. We have considered the rival submissions and perused the material available before us. We notice that the Ld. CIT(A), while deciding the issue, has relied on the observations of the co-ordinate bench in assessee's own case in



**ITA No. 1642/Mum/2020** against the order u/s 263 passed by the PCIT-2, Mumbai on this very issue. The co-ordinate bench in its order dated 31.08.2021 in the above appeal has held as under:

*“Coming to the next issue of provision for leave encashment, we observe that the assessee has claimed an amount of Rs.47.92 crores on account of provision for leave encashment. Based on the fact on record, we noticed that the assessee has not made the payment during this year and rightly statutory auditor has flagged this expenditure which is not allowable u/s 43B. We noticed that Ld. AR heavily relied on the case of Glaxo Smithkline Pharmaceuticals (supra) and we observed that the Hon'ble Supreme Court upheld the constitutional validity of section 43B(1) of the Act and wherein it has accepted the decision of Hon'ble Calcutta High Court. Therefore, as far as this issue is concerned which is against the assessee and the Assessing Officer should have verified the issue in detail. We do not see any submission or any inquiry made by the Assessing Officer on this aspect. Therefore, in our considered view, to the extent of this issue which is against the assessee, we uphold the observations of the Ld. Pr. CIT in this regard and the order passed by the Pr. CIT u/s 263 is stayed to this expenditure.”*

8. While deciding the issue, Ld. CIT(A) upheld the action of the Ld. AO and based on the decision of the Hon'ble Supreme Court case of Exide Industries, has confirmed the disallowance with the following observations:

*“4.5.3 It is observed that the Hon'ble Supreme Court had clearly spelt out in para 39 that purpose of section 43B(f) has not extinguished the autonomy of the assessee to follow the mercantile system. It merely defers the benefit of deduction to be availed by the assessee for the purpose of computing his taxable income and links it to the date of actual payment thereof to the employee concerned. The case laws cited by the appellant are of the period prior to the above judgement of the Apex court. In view of the above judgement of the Apex Court and the decision of the ITAT upholding the order of the PCIT-2, Mumbai u/s 263 of the Act on this issue, it is held that the provision for leave encashment of Rs. 479248882/- accounted on mercantile basis, but not paid on or before the due date u/s 43B is not allowable as an expense from the taxable business income of the appellant. Accordingly, the addition of Rs. 479248882/- made by the AO u/s 43B on this account is hereby "confirmed" and this ground of appeal is "dismissed".*

9. In view of above stated facts, it is clear that section 43B(f) has been correctly applied by the Ld. AO and accordingly the payment for leave



encashment is only allowable at the time of actual payment and the provision for leave encashment is to be added back. Accordingly, we uphold the action of the Ld. AO which has rightly been confirmed by the Ld. CIT(A). Therefore, this ground of appeal is dismissed.

10. The second ground pertains to applicability of provisions of section 115JB of the Act, in the case of the assessee. It has been argued by the Ld. AR that the issue relating to applicability of section 115JB of the Act in the case of Banks has been decided by the **Special bench** in **ITA No. 424/Mum/2020** in the cases of **Union Bank of India** and **Central Bank of India** respectively. It has further been submitted that the Bank of India is also covered by the notification No. SO 610 dated 16.09.1970 based on which the Special Bench has held that section 115JB is not applicable to the banks, notified therein.

11. We have considered the rival submissions and perused the order of the Hon'ble Special Bench. Relevant portion of the decision is reproduced below:

*“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 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.”*

12. Since the assessee is also covered by the notification regarding “corresponding new bank” in terms of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, therefore, respectfully following the



decision of the Hon'ble Special Bench, we hereby hold that the provisions of section 115JB are not applicable to the assessee.

This ground is, accordingly, decided in favour of the assessee.

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

Order pronounced in the open court on 29.11.2024.

**Sd/-**

**BEENA PILLAI**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

**Sd/-**

**RENU JAUHRI**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 29.11.2024

अनिकेत सिंह राजपूत/ स्टेनो

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**

