

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, बी.मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCHES "B", MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं

श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.3001/Mum/2014
Assessment Years: 2002-03**

Bank of India, 8 th Floor, Star House, Taxation Department, Bandra Kurla Complex, Bandra (East), Mumbai-400051	बनाम/ Vs.	DCIT-2(1), Aayakar Bhavan, M.K. Road, Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
PAN. No. AAACB0472C		

निर्धारिती की ओर से / Assessee by	Shri C. Naresh
राजस्व की ओर से / Revenue by	Shri N.P.Singh-CIT-DR

सुनवाई की तारीख / Date of Hearing :	22/12/2016
आदेश की तारीख /Date of Order:	22/12/2016

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 12/02/2014 of the Ld. First Appellate Authority, Mumbai.

2. During hearing of this appeal, ld. counsel for the assessee, Shri C. Naresh, did not press ground no.1, with respect to challenging rectification order u/s 154 of the Income Tax Act, 1961 (hereinafter the Act). The ld. CIT-DR, Shri N.P. Singh, had no objection if this ground is dismissed. Considering the request of the assessee and no objection from Ld. CIT-DR, this ground of the assessee is dismissed as not pressed.

3. The only ground agitated by the ld. counsel for the assessee is ground no.2A and 2B, in the grounds of appeal, which pertains to applying the provisions of section 115JB, relating to MAT to the assessee bank and thus, confirming the stand of the ld. Assessing Officer. At the outset, the ld. counsel claimed that the impugned issue is covered in favour of the assessee by the decision of the Tribunal, in the case of assessee itself, for Assessment Year 2001-02 (ITA No.1498/Mum/2011), order dated 09/04/2014. This factual assertion was not controverted by the ld. CIT-DR.

3.1. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion from the order dated 09/04/2014 for ready reference and analysis:-

“This appeal by the assessee is directed against the order dated 20.12.2010 of CIT(A) for A.Y. 2001-02. The assessee has raised the following grounds:-

XXXXXXXXXXXXXXXXXXXX

5. On the facts and in the circumstances of the case and in law, the Honourable CIT (A) has erred in holding that the provisions of Section 115JB relating to Minimum Alternate Tax (MAT) are applicable to the Appellant-Bank. The learned ACIT be directed not to apply the provisions of section 115JB relating to Minimum Alternate Tax (MAT) to the Appellant Bank.

XXXXXXXXXXXXXXXXXXXX

6. Ground No. 5 is regarding applicability of provisions of section 115JB in case of Bank.

6.1 The Ld. AR of the assessee submitted that the provisions of section 115JB are not applicable to a banking company since the accounts of banks are prepared under schedule III of banking regulation Act and not in accordance with the schedule VI of the Company's Act. In support of his contention he has relied upon the following decisions:

(i) Kurung Thai Bank PCL dated 30.09.2010 (ITA 3390/Mum/2009)

(ii) Maharashtra State Electricity Board (82 ITD 422)

(iii) Kerala State Electricity Board (329 ITR 91) (HC)

(iv) Union Bank of India dated 30.06.2011 (ITA No. 4702/mum/2010)

(v) ICICI Lombard General Insurance Vs. Department of Income Tax (ITA 4286/Mum/2009).

6.2 On the other hand, the Ld. DR has relied upon the orders of authorities below.

6.3 Having considered the rival submissions as well as relevant material on record, we note that this issue has been considered by this Tribunal in the series of decisions including the decision relied upon by the Ld. AR of the assessee. In the case of ICICI Lombard General Insurance (supra) the coordinate bench of this Tribunal has considered and decided an identical issue in para 6 as under:-

“6. We have heard the ld AR of the assessee as well as the ld DR and considered the relevant material on record. An identical issue has been considered and decided by us in assessee’s own case for the AY 2003-04 in ITA No. 2398/Mum/2009 as under:

“9 We have considered the rival submissions as well as the relevant material on record. There is no quarrel on the point that the assessee, being an Insurance Company is not required to prepare its accounts as per Part II & III of Schedule VI of the Companies Act 1956. Sub. Section (2) of sec 211 are required every P&L accounts of the Companies shall be prepared as per the requirement of Part II of Schedule VI. However, the proviso to sub. Sec (2) of sec. 211 of the Companies Act creates an exemption of applicability of sub. Sec. (2) inter-alia in respect of Insurance companies or banking companies or any other companies engaged in generation and supply of electricity for which a form of profit and loss account has been specified in or under the Act governing such class of company. Even if an Insurance Company does not disclose any matter in the Balance Sheet and P&L account because the same is not required to be disclosed by the Insurance Act shall not be treated un-discloser of a true and fair view of the state of affairs of the company as the said condition has been relaxed by sub.sec 5 of sec 211 of the Companies Act .

9.1 It is to be noted that in order to align the provisions of the I T Act with the Companies Act , an amendment has been brought into the statute by the Finance Act 2012 whereby sec 115JB has been amended w.e.f 2013 and therefore, prior to 1.4.2013, the provisions of sec. 115JB cannot be applied in case of Insurance, banking, electricity, generation and distribution companies and other class of companies, which are not required to prepare their accounts and particularly Balance Sheet and P&L account as per part II & III of Schedule VI of the Companies Act.

9.2 The Hyderabad Bench of the Tribunal in the case of State Bank of Hyderabad (supra) has considered and decided a similar issue; though in the case of bank in paras 13 & 14 as under:

“13. The provisions of Sec.1153B will be applicable to all companies. However, it is contended that Sec.115JB will be applicable only where the assessee is required to show profit & loss account in accordance with schedule VI of companies act. As the banks are required to prepare balance sheet and profit & loss account in accordance with the Banking Regulation Act, provision of 115JB cannot be applied to the banks. In the case of Maharashtra State Electricity Board vs.)CIT (82 ITD 422) it was held that provisions of book profit cannot be applied to Electricity Companies. Banking Companies and companies engaged in generation and supply of electricity do not have to prepare their accounts in accordance with parts II and III of Sch. VI of the Companies Act by the virtue of proviso to sec 21 1(2) of the Companies Act. We find that by the Finance Act 2012, with effect from 1.4.2013, even companies to which Proviso to sec 211(2) applies (the banking Companies and companies engaged in generating and distribution of electricity), should prepare their P&Land balance Sheet in accordance with the provisions of the Act Governing such companies. This would mean that prior to AY 2013-14,provisions of sec 115)B will not apply to companies to which proviso to sec 211(2) of the companies Act, 1956 applies. The Assessee being a company to which proviso to sec 211(2) of the Companies Act 1956 applies, will not be liable to be taxed under sec 115JB.

14. The Mumbai Tribunal in the case of Krung Thai Bank Vs. JCIT (133 TTJ 435), to which one of us is a party has held that provisions of sec 115JB cannot be applied to the banking company.”

9.3 Similarly, in the case of Reliance Energy (supra), the coordinate Bench of this Tribunal has held in paras 28 & 29 as under:

“28 As discussed above when it is not possible to prepare the accounts under the Companies Act for the purpose of computation u/s 115JB, therefore, the assessee cannot be forced to prepare the accounts when it is not possible. Therefore, we are in agreement with the contentions of the assessee in as much as the accounting policies followed in the electricity accounts if followed for the preparation of Companies Act account will not disclose true and fair view and will not be in accordance with part II and III of Schedule V of the Companies Act. The ratio of the decisions of the Hon’ble Supreme Court and the ratio of the decision of the Tribunal discussed above are in support of the contentions of the assessee. We further found that the issue of applicability of sec. 115J came before the Tribunal for AY 88-89. Taking into consideration the preparation of accounts under the

Electricity Act and other contentions the assessee including the decisions of the Supreme Court in the case of B.C.Srinivasa Setty (supra), the Tribunal has held that the provisions of sec. 115J are not attracted on the facts of the present case.

29 As discussed above, the assessee is following the accounting policies under the Electricity Supply act and prepared its accounts in view of those very policies. Following those very policies, the accounts in accordance with part II & III of Schedule VI of the Companies Act are not applicable at all. Once there is no possibility for preparing the accounts in accordance with the part II & II of Schedule VI of Companies Act then the provisions of sec. 115JB cannot be forced. Therefore, in view of the above facts and circumstances and respectfully following the above decisions of the Hon'ble Supreme Court and the decision of the Tribunal for AY 88-89, we hold that provisions of sec. 115JB are not applicable on the facts of the present case."

10 Following the decisions of the coordinate Benches of this Tribunal, we hold that when the insurance companies, banking companies and electricity generation and distributions companies are treated in the same class as per the provisions of sec. 211 of the Companies Act in preparing their final accounts, then these companies cannot be treated differently for the purpose of sec. 115JB and accordingly, the provisions of sec. 115JB are not applicable in the case of the assessee." Accordingly, this issue is decided in favour of the assessee and against the revenue".

6.4 Though , section 115 JB ha s been amended to b ring all the Companies in its ambit vide Finance Act 2012, w.e.f 1.4.2013, however, the said amendment is not applicable in the assessment year under consideration.

6.5 Following the decision of co-ordinate bench of this Tribunal we decide this issue in favour of the assessee.

7. In the result appeal of the assessee is partly allowed.

We note that while coming to this conclusion, the Tribunal duly considered the following cases:-

- (i) Kurung Thai Bank PCL dated 30.09.2010 (ITA 3390/Mum/2009)
- (ii) Maharashtra State Electricity Board (82 ITD 422)

- (iii) Kerala State Electricity Board (329 ITR 91) (HC)
(iv) Union Bank of India dated 30.06.2011 (ITA No. 4702/mum/2010)
(v) ICICI Lombard General Insurance Vs. Department of Income Tax (ITA 4286/Mum/2009).

Considering the ratio laid down in the aforementioned cases on identical issues, the Tribunal deliberated upon and decided the issue in favour of the assessee. No contrary decision was brought to our notice by either side and more specifically the Revenue. It is also noted that section 115JB was amended to bring all the companies in its ambit, vide Finance Act, 2012, w.e.f. 01/04/2013. The Assessment Year before us 2002-03, therefore, the said amendment is not applicable to the assessment year under consideration. Respectfully following the aforesaid order of the Tribunal, we decide this issue in favour of the assessee.

Finally, the appeal of the assessee is partly allowed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 22/12/2016.

Sd/-

(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated :22/12/2016

Shekhar, P.S./नि.स.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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