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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/344/2017
IA No.: GA/2/2017 (Old No. GA/3522/2017)
PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-2, KOLKATA
VS.
INDIAN BANK

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th February, 2023

Appearance :
Mr. Smarajit Roychowdhury, Adv.
Mr. Prithu Dudhoria, Adv.
Mr. Soumen Bhattacharjee, Adv.
... for appellant

Mr. C. Bhaskaran, Adv.
Ms. Swapna Das, Adv.
... for respondent

The Court : This appeal filed by the revenue filed under Section 260A of the Income Tax, 1961 (the Act) is directed against the order dated 6th April, 2016, passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No.1460/Kol/2013 for the assessment year 2003-04.

The revenue has framed the following substantial question of law for consideration :-

"Whether, on a true and proper interpretation of the provisions contained in the Income Tax Act, 1961, the Tribunal was justified in law in holding that

the provisions of section 115JB are not applicable in the case of Banking Companies ?"

We have heard Mr. Smarajit Roychowdhury, learned standing Counsel appearing for the appellant/revenue and Mr. C. Bhaskaran, learned counsel assisted by Ms. Swapna Das, learned advocate for the respondent/assessee.

The substantial question of law raised in this appeal was considered by this Court in the case of PCIT vs. Damodar Valley Corporation, (2022) 137 taxmann.com 338 (Cal.) and it was held as follows :-

"On this issue, it would be beneficial to refer to the decision of the Hon'ble High Court of Karnataka in CIT vs. ING Vysya Bank Ltd. reported in [2020] 114 taxmann.com 506/270 Taxman 162/422 ITR 116. In the said decision it was held that provision of Section 115JB cannot be made applicable to insurance companies, banking companies or companies engaged in generation or supply of electricity. The operative portion of the decision is as follows:

> "8. From close scrutiny of section 115JB(2) of the Act, it is axiomatic that every assessee being a company for the purposes of said section prepares its profit and loss account for relevant previous year in accordance with provisions of Part II and Part III of Schedule VI of the Companies Act, 1956. The Assessee being a banking company is not required to prepare its account in accordance with provisions of Part II and Part III of Schedule VI of the Companies Act, 1956. The assessee being a banking company, its accounts are prepared as per the Banking Regulation Act, 1949 and it is not obliged either to convene an annual general meeting or place its profit and loss account in such general meeting. A General meeting contemplated under section 166 of the Companies Act, 1956 is not possible in the case of the assessee as there are no shareholders of the assessee. It is also worth mentioning that under section 166 of the Companies Act, 1956 every company is required to hold a general meeting in each year and section 201 mandates that every year the Board Of

Directors of the company in general meeting shall lay before the company a Balance sheet as at the end of the relevant period and also profit and loss account for the period. Part II and Part III of Schedule VI to the Companies Act specify the method and manner of maintaining profit and loss account. It is also pertinent to note that the assessee under section 210 of the Companies Act, 1956 is also required to lay its account before the annual general meeting. However such accounts have to be prepared in accordance with the Banking Regulation Act, 1949 which is not possible for the reasons assigned *supra*.

9. The submission that proviso to sub-section (2) of section 115JB creates a legal fiction cannot be accepted as under the aforesaid proviso, the company has to prepare the profit and loss account and to place it before the annual general meeting in accordance with provisions with section 210 of the Companies Act, 1956. A banking company under Section 115JB(2) of the Act can prepare additional accounts as per Part II and Part III of Schedule VI of the Companies Act or fulfill the requirements of the proviso of sub-section(2) but it cannot fulfill both the conditions.

10. From perusal of general arrangement of provisions of the Income Tax Act, 1961 where under each head of income, the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of computation provisions in each case bears a relationship to the nature of the charge. Thus, the charging section and computation provisions together constitute an integrated code. When there is a case to which computation provision cannot apply at all, it is evident that such a case was not intended to fall within charging section. [See: Commissioner of Income Tax,Bangalore Vs. B.C.Shrinivasa Setty, 1981 Vol 128 ITR 294] = 2002-TIOL-587-SC-IT-LB. The machinery provisions provided in sub-section (2) of section 115JB of the Act would be rendered wholly unworkable in case of a Banking company. It is also pertinent to mention here that the Companies Act, 1956 has excluded insurance, banking companies or the companies engaged in the generation or supply

of electricity from the purview of section 211(1) of the Companies Act, 1956 and resultantly from the purview of section 115JB of the Act.

11. Admittedly, the provisions of section 115JB of the Act have been amended with effect from 01.04.2013, the memorandum explaining the provisions of Finance Bill, 2012 while explaining the amendments to section 115JB of the Act, notes that in cases of certain companies such as insurance, banking and electricity companies, they are allowed to prepare the profit and loss account in accordance with the sections specified in their Regulatory Acts. Thus, to align the provisions of the Income Tax Act, 1961 with the Companies Act, 1956, it was decided to amend section 115JB of the Act to provide that companies which are not required under section 211 of the Companies Act, 1956 to prepare profit and loss account in accordance with Schedule VI of the Companies Act, 1956. Profit and loss account prepared in accordance with the provisions of their Regulatory Act shall be taken as basis for computing book profit under section 115JB of the Act. We agree with the view taken by Bombay High Court in THE COMMISSIONER OF INCOME TAX-LTU referred to *supra* on the common substantial question of law involved in these appeals. For the foregoing reasons, it is held that the provisions of section 115JB(2) of the Act do not apply to the Banking companies."

5. The decision in ING Vysya Bank Ltd. (supra) was followed by the High Court of Karnataka in *Pr. CIT v. Karnataka Power Corpn. Ltd.* *[2021] 129 taxmann.com 179/281 Taxman 600/436 ITR 292* and the appeal filed by the revenue was dismissed. The revenue had raised before us the effect of the amendment brought about to section 115JB by Finance Act, 2012 with effect from 1st April, 2013 and sought to impress upon us the effect of such amendment to sustain their contention. This very issue was considered by the High Court of Bombay in the case of CIT, LTU v. Union Bank of India [2019] 105 taxmann.com 253/263 Taxman 685. The Court held that the amendments to section 115JB are neither declaratory nor classificatory but are substantive and significant legislative changes and can be applied only prospectively. The operative portion of the decision is as follows:

"17. This proviso thus refers any insurance or banking companies or companies engaged in the generation or supply of electricity or to any other class of company in which form of financial statement has been specified in or under the Act governing such class of company. Combined reading of this proviso to sub-section (1) of section 129 of the Act, 2013 and clause (b) of sub-section (2) of section 115JB of the Act would show that incase of insurance or banking companies or companies engaged in generation or supply of electricity or class of companies for whom financial statement has been 12 specified under the Act governing such company, the requirement of preparing the statement of accounts in terms of provisions of the Companies Act, is not made. Clause (b) of sub-section (2) provides that in case of such companies for the purpose of section 115JB the preparation of statement of profit and loss account would be in accordance with the provisions of the Act governing such companies. This legislative change thus aliens class of companies who under the governing Acts were required to prepare profit and loss accounts not in accordance with the Companies Act, but in accordance with the provisions contained in such governing Act. The earlier dichotomy of such companies also, if we accept the revenue's contention, having the obligation of preparing accounts as per the provisions of the Companies Act has been removed.

18. These amendments in section 115JB are neither declaratory nor classificatory but make substantive and significant legislative changes which are admittedly applied prospectively. The memorandum explaining the provision of the Finance Bill, 2012 while explaining the amendments under section 115JB of the Act notes that in case of certain companies such as insurance, banking and electricity companies, they are allowed to prepare the profit and loss account in accordance with the sections specified in their regulatory Acts. To align the Income Tax Act with the Companies Act, 1956 it was decided to amend Section 115JB to provide that the companies which are not required under section 211 of the Companies Act, to prepare profit and loss account in accordance with Schedule VI of the Companies Act, profit and loss 13 account prepared in

accordance with the provisions of their regulatory Act shall be taken as basis for computing book profit under section 115 JB of the Act."

6. Further, the High Court of *Kerala in Pr. CIT v. State Bank of India* [IT Appeal No. 143 (Ker.) pf 2019, dated 26-9-2019] in 2019-TIOL-2558-HC-Kerala-IT had considered the identical issue in respect of a banking company and following the decision in the *Kerala State Housing Board(supra)* and *Union Bank of India (supra)* had dismissed the appeal filed by the revenue."

Further, the learned counsel appearing for the respondent/assessee has placed before this Court the decision of the High Court of Karnataka in Commissioner of Income-tax, LTU vs. Canara Bank, (2022) 135 taxmann.com 126 (Karnataka) wherein identical issue was decided in favour of the assessee.

Thus, following the above decision, the appeal filed by the revenue is dismissed and the substantial question of law is answered against the revenue.

The stay application being IA No.: GA/2/2017 (Old No. GA/3522/2017) is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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