

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI G BENCH, MUMBAI**

Before Shri Pramod Kumar, AM, and Smt Asha Vijayraghavan JM

ITA No. 3390/Mum/09
Assessment year 2004-05

Krung Thai Bank PCL
62, Maker Chambers,
Maker Chambers VI
Nariman Point, Mumbai 400 021

.....**Appellant**

Vs.

Joint Director of Income Tax - International Taxation
Circle 3(1), Mumbai

..... **Respondent**

Appellant by : Shri Gajendra Golchha
Respondent by : Shri A K Nayak

O R D E R

Per Pramod Kumar :

1. By way of this appeal, the assessee, a foreign bank operating in India, has challenged correctness of Commissioner (Appeals)'s order dated 23rd January 2009, in the matter of assessment under section 143(3) r.w.s. 147 of the Income Tax Act, 1961, for the assessment year 2004-05.

2. In the first ground of appeal, the assessee has challenged CIT(A)'s upholding the validity of reassessment proceedings under section 147 on the facts of this case.

3. To adjudicate on this grievance, a few material facts need to be taken note of. The assessee is a foreign bank operating in India through a branch office. While its original assessment under section 143(3) was completed on 19th September 2006, without making any adjustments to the income returned by the assessee, the Assessing Officer reopened the assessment by issuing notice under section 147 on 29th May 2007. The reasons for so reopening the assessment were as follows :

On perusal of the computation of income, the assessee has shown a profit of Rs 78,32,594 as per profit and loss account. After making necessary adjustments as per normal provisions of the Act, the assessee has shown a total income of Rs 94,74,105. After set off of brought forward loss of AY 2003-04, the assessee has declared nil income. **However, the assessee has not computed book profit whereby income chargeable to tax has escaped assessment.**

(Emphasis by underlining supplied by us)

4. The very foundation of impugned reopening the assessment is the assumption that the provisions of Minimum Alternate Tax under section 115 JB would apply to the assessee. That is the only addition made by the Assessing Officer in the reassessment proceedings.

5. Learned counsel for the assessee, however, contends that the provisions of MAT do not apply to the assessee, and , for this reason,

very foundation of impugned reassessment proceedings is devoid of legally sustainable merits. His line of reasoning is this. The provisions of MAT can come into play only when the assessee prepares its profit and loss account in accordance with Schedule VI to the Companies Act. It is pointed out that , in terms of the provisions of Section 115JB(2), every assessee is required to prepare its profit and loss account in terms of the provisions of Part II and III of Schedule VI to the Companies Act. Unless the profit and loss is so prepared, the provisions of Section 115 JB cannot come into play at all. However, the assessee is a banking company and under proviso to Section 211 (2) of the Act, the assessee is exempted from preparing its books of accounts in terms of requirements of Schedule VI to the Companies Act, and the assessee is to prepare its books of accounts in terms of the provisions of Banking Regulation Act. It is thus contended that the provisions of Section 115 JB donot apply in the case of banking companies which are not required to prepare the profit and loss account as per the requirements of Part II and III of Schedule VI to the Companies Act. Since the provisions of Section 115 JB donot apply to the assessee company, the reasons recorded for reopening the assessment are clearly wrong and insufficient. We are urged to quash the reassessment proceedings on this short ground.

6. Learned Departmental Representative, on the other hand, vehemently relies upon the orders of the authorities below and submits that there is no specific exclusion clause for the banking companies, and in the absence of such a clause, it is not open to us to infer the same. The submissions of the learned counsel, according to the departmental representative, are clearly contrary to the legislative intent and plain wordings of the statute.

7. The plea of the assessee is indeed well taken, and it meets our approval. The provisions of Section 115 JB can only come into play when the assessee is required to prepare its profit and loss account in accordance with the provisions of Part II and III of Schedule VI to the Companies Act. The starting point of computation of minimum alternate tax under section 115 JB is the result shown by such a profit and loss account. In the case of banking companies, however, the provisions of Schedule VI are not applicable in view of exemption set out under proviso to Section 211 (2) of the Companies Act. The final accounts of the banking companies are required to be prepared in accordance with the provisions of the Banking Regulation Act. The provisions of Section 115 JB cannot thus be applied to the case of a banking company.

8. In view of the above discussions, and following the view taken by a coordinate bench in the case of Maharashtra State Electricity Board vs JCIT (82 ITD 422), which holds that provisions of MAT cannot be applied to electricity companies for mutually similar reason we uphold the plea of the assessee. The provisions of Section 115 JB do not apply to the assessee, and , as such, the Assessing Officer was in error in concluding that income had escape⁴d assessment in the hands of the assessee. The very initiation of reassessment proceedings was bad in law, and we quash the same.

9. Ground No. 1 is thus allowed.

10. As the very initiation of reassessment proceedings has been quashed, we see no need to address ourselves to other grievances

raised by the assessee. These grievances are academic now. In any case, this decision will also govern the question whether on merits the addition on account of MAT under section 115JB could have been made; that is the only quantum addition made in the reassessment proceedings. We may also add that learned representatives also addressed us at length other facets of validity of reopening, but having come to the conclusions as above, we do not see any need to deal with those arguments at this stage.

11. In the result, appeal is allowed in the terms indicated above. Pronounced in the open court today on 30th day of September, 2010.

Sd/-
(Asha Vijayraghavan]
Judicial Member

sd/-
[Pramod Kumar]
Accountant Member

Mumbai; 30th day of September, 2010.

Copies to:

1. The appellant
2. The respondent
3. The CIT , Mumbai
4. The CIT(A) , Mumbai
5. DR, G bench, ITAT, Mumbai
6. Guard File

True copy
By order etc

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai

