

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 14TH DAY OF OCTOBER, 2014

PRESENT

HON' BLE MR. JUSTICE N.KUMAR

AND

HON' BLE MR. JUSTICE B.MANOHAR

ITA NO.1041 OF 2008

BETWEEN

1.THE COMMISSIONER OF INCOME TAX
C.R. BUILDING
ATTAVARA, MANGALORE

2.THE ASST COMMISSIONER OF
INCOME TAX, CIRCLE 1
UDUPI

... APPELLANTS

(By Sri. K V ARAVIND -- ADV.)

AND

M/S SYNDICATE BANK
SYNDICATE HOUSE,
MANIPAL

... RESPONDENT

(By Sri.K.P.KUMAR, SR.ADV. FOR
M/S. KING & PARTRIDGE)

THIS ITA IS FILED U/S.260-A OF I.T.ACT, 1961
ARISING OUT OF ORDER DATED 16-06-2008 PASSED IN
ITA NO. 529/BNG/2006, FOR THE ASSESSMENT YEAR
1999-2000, PRAYING TO :

I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN,

II. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO. 529/BNG/2006, DATED 16-06-2008 CONFIRM THE ORDERS OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-1, UDUPI IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ITA COMING ON FOR HEARING THIS DAY, N.KUMAR J., DELIVERED THE FOLLOWING:

J U D G M E N T

The Revenue has preferred this appeal challenging the order passed by the Tribunal which has affirmed the order passed by the Appellate Commissioner holding that the issue of provision for doubtful debts is directly covered by the decision of the Income Tax Appellate Tribunal, Bangalore as well as the provision for losses cannot be added back to the book profit under Section 115JA of the Income Tax Act, 1961 (for short hereinafter referred to as 'the Act').

2. The assessee is carrying on business in banking. In respect of the assessment year 1999-2000 the assessee filed the return of income computing its

total income under the regular provisions of the Act as well as under Section 115JA of the Act. The assessee had claimed deduction under the provision for bad and doubtful debts of Rs.8,73,11,283/- and provision for loss of assets of Rs.1,20,00,000/-. The Assessing Authority held that the provision for doubtful and bad debts is not an ascertained liability and it is only a provision made by the assessee to safeguard against future losses, if any the assessee may incur on account of its debtors not paying the amount. Therefore, the provision for loss of assets is not an ascertained liability and the said two items came to be added back. The assessee preferred an appeal to the Commissioner of Income Tax, Appeals. The Appellate Authority held that the provision for bad and doubtful debts is an ascertained liability and therefore is allowable as deduction, by relying on the earlier order passed by the tribunal in the case of M/s.Canbank Financial Services Ltd. Further it held, provision for loss of assets is

covered by Section 36(I)(viia) of the Act. Aggrieved by the same the Revenue preferred appeal to the Tribunal. The Tribunal confirmed the order of the Appellate Authority and held the provision for bad and doubtful debts is covered by the judgment of this Court in the case of *Karnataka Bank Ltd* and the issue regarding provision for loss of assets is as per the RBI guidelines and therefore, it was treated as bad and doubtful debts and accordingly, dismissed the appeal. Aggrieved by the said order Revenue is in appeal.

3. The appeal was admitted to consider the substantial question of law raised in the memorandum of appeal. However, the substantial question of law which arises for consideration in this appeal is as under :-

'Whether the provision for doubtful debts of Rs.8,73,11,283/- and the provision for loss of assets of Rs.1,20,00,000/- is required to be added back to the book profit as required under Section 115JA of the Act in

terms of explanation to Section 115JA of the Act, in particular clauses (c) and (g)'.

4. This Court had an occasion to consider the said question in the case of *Commissioner of Income Tax – vs – Yokogawa India Ltd. reported in (2012) 204 Taxman 305* wherein it was held as under :-

“In the present case, the debt is an amount receivable by the assessee and not any liability payable by the assessee and, therefore, any provision made towards irrecoverability of the debt cannot be said to be a provision for liability. Therefore, it was held that item (c) of the Explanation is not attracted to the facts of the case. Item (c) in Section 115JA and 115-JB(1) are identical. In order to attract the Explanation, the debt which is doubtful or bad should satisfy the requirement contemplated in item (c) of the Explanation. It is the amount or amounts set aside as provisions made for meeting the liability other than the ascertained liabilities. In the instant case also the bad and doubtful debt for which a provision is made which is

in the nature of diminution in the value of any asset would not fall within item (c) of Explanation (i). It is in that context the Appellate Commissioner as well as the Tribunal has granted relief to the assessee. Realising the fatality of the said argument, it is contended now that item (i) cannot amount to satisfaction as provision for diminishing in the value of assets is substituted, in case of the assessee falls under Item (c). In meeting the aforesaid case, the learned counsel for the assessee brought to our notice the judgment of the Apex Court in the case of Vijaya Bank (supra) where the Apex Court had an occasion to consider his explanation. It accepted the argument on behalf of the Revenue to the effect that the explanation makes it very clear that there is a dichotomy between actual write off on the one hand and provision for bad and doubtful debt on the other. A mere debit to the profit and loss account would constitute a bad and doubtful debt, but it would not constitute actual write off and that was the very reason why the

explanation stood inserted. Prior to the Finance Act, 2001 many assesseees used to take the benefit of deduction under Section 36(1)(vii) of the 1961 Act by merely debiting the impugned bad debt to the profit and loss account and, therefore, the Parliament stepped in by way of Explanation to say that a mere reduction of profits by debiting the amount to the profit and loss account *per se* would not constitute actual write off. The Apex Court accepted the said legal position. However, it was clarified that besides debiting the profit and loss account and creating a provision for bad and doubtful debt, the assessee correspondingly /simultaneously obliterated the said provision from its account by reducing the corresponding amount from loans and advances/debtors on the assets side of the balance sheet and, consequentially, at the end of the year, the figure in the loans and advances or the debtors on the assets side of the balance sheet was shown as net of the provision for the impugned bad debt. Then the said amount representing bad debt or

doubtful debt cannot be added in order to compute book profit. Therefore, after the Explanation the assessee is now required not only to debit the profit and loss account but simultaneously also reduce the loans and advances or the debtors from the assets side of the balance sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/debtors is shown as net of the provisions for the impugned bad debt. Therefore, in the first place if the bad debt or doubtful debt is reduced from the loans and advances or the debtors from the assets side of the balance sheet, the Explanation to Section 115JA or JB is not at all attracted. In that context even if amendment which is made retrospective, the benefit given by the Tribunal and the Appellate Commissioner to the assessee is in no way affected. In that view of the matter, we do not see any merit in this appeal.”

From the aforesaid judgment it is clear if the bad debt or doubtful debt is reduced from the loss and

advances from the debtors on the assets side of the balance sheet, the Explanation to Section 115JA or 115JB of the Act is not at all attracted. If it is not reduced, Section 115JA of the Act is attracted. It is purely a question of fact. From the material on record it is not possible to make out whether the aforesaid bad and doubtful debts are reduced from the loss and advances of the debtors from the assets side of the balance sheet. Without ascertaining the said fact it is not possible to answer the substantial question of law one way or the other. Therefore, the proper thing to do is to set aside the impugned orders and remit the matter back to the First Appellate Authority with a direction to the Authority to look into the records and then record a finding one way or the other in the light of the aforesaid judgment. That would meet the ends of justice. Therefore, the substantial question of law is not answered.

5. Accordingly, we pass the following

ORDER

- i) Appeal is partly allowed;
- ii) Impugned orders passed by both the Appellate Authorities are set aside and the matter is remitted back to the First Appellate Authority for fresh consideration in the light of the judgment and pass appropriate orders.

Sd/-
JUDGE

Sd/-
JUDGE

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