

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JANUARY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

I.T.A.No. 18/2014

C/W

I.T.A. Nos.229/2009, 21/2012 & 35/2014

I.T.A.No.18/2014

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
C.R. BUILDING, QUEENS ROAD
BANGALORE.
2. THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE-11(3), RASHTROTHANA BHAVAN
NRUPATHUNGA ROAD
BANGALORE.

... APPELLANTS

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

AND:

M/S. ING VYSYA BANK LIMITED
ING VYSYA HOUSE
No.22, M.G. ROAD
BANGALORE-560001.

... RESPONDENT

(By Sri. A. SHANKAR, SENIOR COUNSEL FOR
Sri. M. LAVA, ADV.)

THIS I.T.A. IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 14-08-2013 PASSED IN ITA No.443/BANG/2012, FOR THE ASSESSMENT YEAR 2002-03 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.443/BANG/2012, DATED 14-08-2013 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-11(3), BANGALORE.

I.T.A.No.229/2009

BETWEEN:

M/S. ATRIA POWER CORPORATION LIMITED
 REP. BY ITS DIRECTOR
 SRI. A.S. CHINNASWAMY RAJU
 No.1, PALACE ROAD
 BANGALORE-560001.

... APPELLANT

(By Sri. A. SHANKAR, SENIOR COUNSEL FOR
 Sri. M. LAVA, ADV.)

AND:

THE DEPUTY COMMISSIONER OF INCOME TAX
 CENTRAL CIRCLE-2(1)
 C.R. BUILDING, QUEENS ROAD
 BANGALORE-560001.

... RESPONDENT

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

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THIS I.T.A. IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 23-12-2008 PASSED IN ITA No.913/BANG/2007, FOR THE ASSESSMENT YEAR 2005-06 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.913/BANG/2007, DATED 23-12-2008, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.No.21/2012**BETWEEN:**

M/S. ATRIA HYDEL POWER LIMITED
 REP. BY ITS DIRECTOR
 SRI. K. NAGARAJU
 No.1, PALACE ROAD
 BANGALORE-560001.

... APPELLANT

(By Sri. A. SHANKAR, SENIOR COUNSEL FOR
 Sri. M. LAVA, ADV.)

AND:

THE INCOME TAX OFFICER
 WARD 11(1)
 R.P. BHAVAN, OPP. RBI
 NRUPATUNGA ROAD
 BANGALORE-560001.

... RESPONDENT

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

THIS I.T.A. IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 16-9-2011 PASSED IN ITA No.1319/BANG/2010, FOR THE ASSESSMENT YEAR 2006-07 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN. SET ASIDE THE ORDER DATED 16-9-2011 PASSED BY THE TRIBUNAL IN ITA No.1319/BANG/2010, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.No.35/2014**BETWEEN:**

ATRIA POWER CORPORATION LIMITED
 REP. BY ITS MANAGING DIRECTOR
 SRI. A.S. CHINNASWAMY RAJU
 No.1, PALACE ROAD
 BANGALORE-560001.

... APPELLANT

(By Sri. A. SHANKAR, SENIOR COUNSEL FOR
 Sri. M. LAVA, ADV.,)

AND:

THE INCOME TAX OFFICER
WARD 11(1)
R.P. BHAVAN, OPP. RBI
NRUPATUNGA ROAD
BANGALORE-560001.

... RESPONDENT

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

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THIS I.T.A. IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 22-08-2013 PASSED IN ITA No.148/BANG/2012, FOR THE ASSESSMENT YEAR 2009-10 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT. TO ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE 'C' BENCH, BANGALORE IN ITA NO.148/BANG/2012 DATED 22/8/2013 RELATING TO THE ASSESSMENT YEAR 2009-10.

THESE I.T.As. COMING ON FOR FINAL HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

COMMON JUDGMENT

In this batch of appeals a common substantial question of law viz., whether the provisions of Section 114JB of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short) apply to the assesseees as they are Banking Companies, arise for consideration. Therefore, these appeals were heard analogously and are being decided by this common judgment. These

appeals pertain to assessment year 2002-2003, 2005-2006, 2006-2007 and 2009-2010. In addition, in ITA No.18/2014, an additional substantial question of law arises, viz., whether the tribunal committed an error of law in allowing the claim of the assessee on the issue of amortization of investment "held to maturity" without appreciating the fact that though the same was done as per Reserve Bank of India guidelines, yet the same was not an allowable expenditure under Section 37(1) of the Act. For the facility of reference, facts from ITA No.18/2014 are being referred to.

2. Facts giving rise to the filing of these appeals briefly stated are that the assessee is engaged in the business of banking. In the computation of business income furnished along with the return of income for assessment year 2002-2003, the assessee claimed deduction of a sum of Rs.11,18,42,001/- on account of write off of non convertible debentures. The assessee in the communication dated 01.02.20015 furnished for the

Assessing Officer submitted that the total write off on account of non convertible debentures was a sum of Rs.17,16,17,001/-, out of which a sum of RS.5,97,75,000/- had been written off during the previous year and charged to profit and loss account. It was claimed that the aforesaid amount has become irrecoverable and therefore, a deduction was claimed on account of bad debts under Section 36(1)(vii) of the Act. The Assessing Officer held that since the aforesaid amounts were subject matter of another assessment year, the claim cannot be entertained in the subsequent assessment year.

3. Being aggrieved, the assessee preferred an appeal. The Commissioner of Income Tax (Appeals) vide order dated 02.01.2012 upheld the order of the Assessing Officer. The assessee thereupon approached the Income Tax Tribunal. The Tribunal vide impugned order dated 14.08.2013 allowed the appeal preferred by the assessee and held that the provisions of Section

115JB of the Act do not apply to the assessee, as it was a Banking company. It was also held that the assessee was entitled to deduction of the amount in question on account of it being a bad debt under Section 36(1)(vii) of the Act. In the aforesaid factual background, this appeal has been filed.

4. Learned counsel for the assessee has invited the attention of this court to Section 115JB of the Act, which was amended with effect from 01.04.2013. It is submitted that Section 115JB(2) of the Act as it existed prior to its amendment with effect from 01.04.2013 mandates the companies to prepare its profit and loss account for the relevant previous year in accordance with provisions of Part-II and Part-III of Schedule-VI to the Companies Act, 1956. However, the aforesaid provision applies to every company and no exclusion has been made in respect of companies' viz., Banking companies, or insurance companies. It is also urged that the aforesaid fact is fortified by amendment to Section

115JB of the Act with effect from 01.04.2013. Therefore, the provisions of Section 115JB of the Act as it existed prior to its amendment with effect from 01.04.2013 apply to the assessee. It is also submitted that the assessee is not entitled to deduction of the amount as claimed by him and the tribunal grossly erred in holding so. While inviting the attention of this court to Section 115JB(2) of the Act, it is pointed out that the aforesaid provision contains a legal fiction insofar as it pertains to the requirement contained in Section 210 of the Act. In support of aforesaid submissions, reliance has been placed on decisions of the Supreme Court in **'APOLLO TYRES LTD. VS. COMMISSIONER OF INCOME TAX', (2002) 122 TAXMAN 562 (SC), SOUTHERN TECHNOLOGIES LTD VS. JOINT COMMISSIONER OF INCOME TAX', (2010) 320 ITR 577 AND ' COMMISSIONER OF INCOME-TAX III VS. CALCUTTA KNITWEARS', (2014) 43 TAXMANN.COM 446 (SC).**

5. On the other hand learned Senior counsel for the assessee submitted that the issue whether provisions of Section 115JB of the Act apply to banking company is no longer *res integra* and is covered by a division bench decision of '**BOMBAY HIGH COURT IN COMMISSIONER OF INCOME TAX-LTU VS. UNION BANK OF INDIA', ITA NO.1196/2013 DATED 16.04.2019**'. It is further submitted that the second substantial question of law is also covered by a division bench decision of this court in the case of '**COMMISSIONER OF INCOME TAX AND ANOTHER VS. KARNATAKA VIKAS GRAMIN BANK', (2016) 130 DTR (KAR) 26**'. It is also urged that Section 115JB(2) of the Act does not create any legal fiction and the second issue involved in ITA No.18/2014 no longer survives for consideration in view of instruction No.17/2008 dated 26.11.2008 issued by Central Board of Direct Taxes. It is also urged that the decision rendered in the case of **SOUTHERN TECHNOLOGIES**

LTD has been considered by a division bench of this court in '**KARNATAKA BANK LTD. VS. ASSISTANT COMMISSIONER OF INCOME-TAX**', (2013) 356 ITR 549 (KARN) and it has been held that the Reserve Bank of India directions of 1998 are only disclosure norms and have nothing to do with the computation of the total taxable income under the Income Tax Act, 1961.

6. We have considered the submissions made by the learned counsel for the parties and have perused the record. Before advertng to the substantial questions of law, we may take note of well settled rules of statutory interpretation with regard to taxing statutes. "In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four

corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering that was the substance of the matter. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency." [See: '**CIT, BOMBAY VS. PROVIDENT INVESTMENT CO.,', AIR 1957 SC 664, 'CIT, GUJARAT VS. VADILAL LALLUBHAI', AIR 1973 SC 1016, 'HANSRAJ & SONS VS. STATE OF JAMMU & KASHMIR', AIR 2002 SC 2692, 'VIKRANT TYRES LTD. VS. THE FIRST INCOME-TAX OFFICER, MYSORE', JT 2001 (2) SC 45 PP. 459, 460: (2001)**]

3 SCC 76: AIR 2001 SC 800] [SEE: 'PRINCIPLES OF STATUTORY INTERPREATION BY JUSTICE G.P.SINGH 13TH EDITION PAGE 830].

7. In the light of aforesaid well settled legal principles we may advert to the substantial question of law viz., with regard to applicability of Section 115JB(2) of the Act to the Banking Companies. Before proceeding further, it is apposite to take note of the relevant statutory provisions. Section 115JB of the Act pertains to special provisions for payment of tax by certain companies and provides a formula for payment of minimum tax in case of companies whose tax payable on the total income works out to be below a certain minimum threshold percentage of its book profit. From perusal of the Circular dated 18.02.1998 issued by the Central Board of Direct Taxes, it is evident that the object for introduction of minimum alternative tax is to levy a minimum tax on companies which are having book profits and paying dividends but are not paying

any taxes. The relevant extract of Section 115JB of the Act reads as under:

2. Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956.

Provided that while preparing the annual accounts including profit and loss account –

- (i) the accounting policies;*
- (ii) the accounting standards adopted for preparing such accounts including profit and loss account;*
- (iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions*

of Section 210 of the Companies Act, 1956.

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]. 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.

12. Now we may advert to the second substantial question of law involved in ITA No.18/2014. The aforesaid substantial question of law is squarely covered by instruction No.17/2008 dated 26.11.2008 issued by the **Central Board of Direct Taxes/RBI** and is covered by Clause (vii) provided therein. The decision in the case of **SOUTHERN TECHNOLOGIES** was considered by a

division bench of this court in **KARNATAKA BANK LTD.,** supra and it has been held that where the assessee maintains the accounts in terms of Reserve Bank of India Regulations, the assessee is entitled to deductions and it cannot be denied by the authorities under the pretext that it was showing as investment in the balance sheet. Accordingly, the common questions of law are answered in favour of the assessee and against the revenue.

In the light of aforesaid instruction, the substantial question of law framed is answered accordingly.

In view of preceding analysis, the appeals are disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**