Cited Here

DEPUTY COMMISSIONER OF INCOME TAX vs. SPPL PROPERTY MANAGEMENT PVT. LTD.

IN THE ITAT KOLKATA BENCH 'A'

A. T. VARKEY, JM & DR. M. L. MEENA, AM.

ITA No. 2074/Kol/2019

Jul 30, 2021

(2021) 62 CCH 0379 KolTrib

Legislation Referred to

Section 115JB, 143(3)

Case pertains to

Asst. Year 2009-10

Decision in favour of:

Assessee

Company—Special provision for payment of tax by certain companies— Sole ground of appeal of Revenue is that CIT(A) erred in deleting addition made by AO on account of 'provision for bad and doubtful debts' in computation of book profit u/s 115JB — CIT(A) delete addition by making a finding of fact that assessee company had debited in its books of accounts as 'provision for bad and doubtful debts' which is an actual written off of bad debts — Held, in this case though in computation of income filed provision for bad and doubtful debts had been added back to total income, however, Sundry Debtors on asset side of Balance Sheet have been reduced by an equivalent amount and since such amount of provision having not been transferred to liability side of Balance sheet as "current Liabilities and provisions", such provision for bad and doubtful debt is allowable u/s. 36(1)(viCIT(A) has rightly allowed claim of assessee — And since it has been found that it was actual write off of bad debts and not provision as erroneously noted by AO, clause (c) or (i) of Explanation (1) to sub-section (2) of section 115JB will not be attracted — Tribunal in DCIT Vs. Peerless General Finance & Investments Co. Ltd., ITA No. 50/Kol/2009 held that CIT(A) has correctly held that while computing book profit, provision for diminution in value of

investments and provision for non-performing asset, since were not liabilities, clause "(c)" in Explanation (1) to sub-section (2) of section 115JB was not attracted — And hence, he rightly directed AO not to add back these amounts to book profit — Sub-clause (i) of Explanation (1) to section 115JB has been inserted by Finance Act, 2009, with retrospective effect from 01.04.2001 and it is noted pertains to amounts set aside as provision for diminution in value of any assets — Admitted fact is that assessee has shown provision for diminution in value of investment and provision for NPA which was debited to P&L Account — And since both amounts are in respect of investments and asset (non-performing assets) pertained to asset item in Balance Sheet, so, per-se clause (i) of Explanation (1) of section 115JB is attracted — However, assessee's case is that though these two items have been shown as provision "it is not a provision but it is actual write off", therefore, clause (i) of Explanation (1) to sub-section (2) of section 115JB is not applicable — If provision for diminution in value of investment is not a mere provision made by assessee by merely debiting profit and loss account and makes a credit to "current liabilities and provisions" on liabilities side of balance sheet, then it would constitute provision for bad and doubtful debt, but if an assessee debits an amount of doubtful debt to profit and loss account and simultaneously obliterate such provision from its account by reducing corresponding amount from loans and advances on asset side of balance sheet and consequently, at end of year shows loans and advances on asset side of balance sheet as net of provision for bad debt, it would amount to an actual write off and such actual write off would not attract clause (i) of Explanation to sub-section (2) of section 115JB — In light of aforesaid decision of this Tribunal in Peerless General Finance & Investments Co. Ltd. (supra), issue is no longer res integra and CIT(A) rightly allowed claim of assessee since said provision was an actual write off and therefore, it does not attract clause (i) or (c) of Explanation (1) of sub-section (2) of section 115JB — There is no infirmity in order passed by CIT(A) which is confirmed — Revenue's appeal dismissed.

Held

In this case though in the computation of income filed the provision for bad and doubtful debts amounting to Rs. 94,22,355/- had been added back to the total income, however, the Sundry Debtors on the asset side of the Balance Sheet have been reduced by an equivalent amount i.e. Rs.94,22,355; and since such amount of provision having not been transferred to the liability side of the Balance sheet as "current Liabilities and provisions", such provision for bad and doubtful debt is allowable u/s. 36(1)(vi).

(para 8)

CIT(A) has rightly allowed the claim of the assessee. And since it has been found that it was actual write off of bad debts and not provision as erroneously noted by AO, clause (c) or (i) of Explanation (1) to sub-section (2) of section 115JB will not be attracted. Tribunal in DCIT Vs. The Peerless General Finance & Investments Co. Ltd., ITA No. 50/Kol/2009 held as under:

8. CIT(A) has correctly held that while computing book profit, provision for diminution in value of investments and provision for non-performing asset, since were not liabilities, clause "(c)" in Explanation (1) to sub-section (2) of section 115JB was not attracted. And hence, he rightly directed the AO not to add back these amounts to the book profit. Sub-clause (i) of

Explanation (1) to section 115JB has been inserted by the Finance Act, 2009, with retrospective effect from 01.04.2001 and it is noted pertains to the amounts set aside as provision for diminution in value of any assets. Admitted fact is that assessee has shown provision for diminution in value of investment and provision for NPA amounting to Rs.19,57,60,485/- which was debited to the P&L Account. And since both the amounts are in respect of investments and asset (non-performing assets) pertained to the asset item in the Balance Sheet, so, per-se clause (i) of Explanation (1) of section 115JB is attracted. However, the assessee's case is that though these two items have been shown as provision "it is not a provision but it is actual write off", therefore, clause (i) of Explanation (1) to sub-section (2) of section 115JB is not applicable.

9. If the provision for diminution in value of investment is not a mere provision made by the assessee by merely debiting the profit and loss account and makes a credit to the "current liabilities and provisions" on the liabilities side of the balance sheet, then it would constitute provision for bad and doubtful debt, but if an assessee debits an amount of doubtful debt to the profit and loss account and simultaneously obliterate such provision from its account by reducing the corresponding amount from the loans and advances on the asset side of the balance sheet and consequently, at the end of the year shows the loans and advances on the asset side of the balance sheet as net of the provision for bad debt, it would amount to an actual write off and such actual write off would not attract clause (i) of the Explanation to sub-section (2) of section 115JB.

(para 9)

In the light of the aforesaid decision of this Tribunal in the Peerless General Finance & Investments Co. Ltd. (supra), issue is no longer res integra and CIT(A) rightly allowed the claim of assessee since the said provision was an actual write off and therefore, it does not attract clause (i) or (c) of Explanation (1) of sub-section (2) of section 115JB. There is no infirmity in the order passed by the CIT(A) which is confirmed. Revenue's appeal dismissed.

(para 10)

DCIT Vs. The Peerless General Finance & Investments Co. Ltd., ITA No. 50/Kol/2009 relied.

Conclusion

If the provision for diminution in value of investment is not a mere provision made by the assessee by merely debiting the profit and loss account and makes a credit to the "current liabilities and provisions" on the liabilities side of the balance sheet, then it would constitute provision for bad and doubtful debt, but if an assessee debits an amount of doubtful debt to the profit and loss account and simultaneously obliterate such provision from its account by reducing the corresponding amount from the loans and advances on the asset side of the balance sheet and consequently, at the end of the year shows the loans and advances on the asset side of the balance sheet as net of the provision for bad debt, it would amount to an actual write off and such actual write off would not attract clause (i) of the Explanation to sub-section (2) of section 115JB.

In favour of

Assessee

Cases Referred to

Southern Technologies Ltd. vs. CIT (2010) 320 ITR 577 (SC)
T.R.F. Ltd. vs. CIT (2010) 323 ITR 397 (SC)
Vithaldas H Dhanjibhai Bardanwala v. CIT, reported in (1981) 130ITR 95
CIT v. ILPEA Paramount (P.) Ltd. [2010] 192 Taxman 65/[2011] 336ITR 54
Southern Technologies Ltd. Vs. Jt. CIT (2010) 320 ITR 577/187 Taxman 346
CIT V. Jawala Prasad Tiwari (1953) 24 ITR 537 (Born.)
Vithaldas H Dhanjibjai Bardanwala v. CIT (1981) 130 ITR 95 (Guj.)
CIT v. HCL Comnet Systems & Services Ltd. (2008) 305 ITR 409/174 Taxman 118 (SC)
Vijaya Bank v. CIT [2010] 323 ITR 166/190 Taxman 257 (SC) (para 4)

Counsel appeared:

Ranu Biswas, Addl. CIT for the Appellant

ORDER

PER BENCH:

1. This is an appeal preferred by the Revenue against the order of the Ld. CIT(A)-10, Kolkata dated 20.09.2019 for AY 2009-10.

2. The Grounds of appeal raised by the Revenue are as under:

> *"1. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO of Rs. 94,22,355/- on the account of 'provision for bad and doubtful debts' in the computation of book profit u/s 115JB of the Act.*
>
> *2. The appellant craves leave to make any addition, alteration or modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.*

3. None appeared on behalf of the assessee. However, on perusal of the sole ground of appeal preferred by the Revenue, we note that the issue is no longer 'Res-Integra'. So, we are inclined to dispose of this appeal of the revenue after hearing the Additional Commissioner of Income Tax Smt. Ranu Biswas the Ld. Sr. DR.

4. The sole ground of appeal of the Revenue is that the Ld. CIT(A) erred in deleting the addition made by the AO of Rs. 94,22,355/- on account of 'provision for bad and doubtful debts' in the computation of book profit u/s 115JB of the Income Tax Act, 1961 (hereinafter referred to as the Act). The AO has disallowed the claim of the assessee by noting as under:

> ***"02. Addition of Provision of Doubtful Debts on Book Profit u/s 115JB:*** *It is seen from the assessment order u/s 143(3) dated 27.12.2011 that the assessee made "provision for bad & doubtful debtors' amounting Rs. 94,22,355/- as shown in the Schedule Q- administrative expenses to the Profit and loss account for the year ended 31.03.2009 required to be added was not considered for the purpose of computing the book profit u/s 115JB of the I. T. Act. The language of Section 115JB clearly speaks: for the purpose for this section "book profit means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2) as increased by*

(a)

(b)

(c) the amount or amounts set aside to provision made for meeting liabilities, other than ascertained liabilities or.

(i) The amount r amounts set aside as provision for diminution in the value of assets."

5. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the addition by making a finding of fact that the assessee company had debited in its books of accounts to the tune of Rs. 94,22,355/- as 'provision for bad and doubtful debts' which is an actual written off of bad debts. This finding of fact that the assessee has actually written off the bad debts to the tune of Rs. 94,22,355/- has not been assailed by the Department which can be discerned from the perusal of the grounds of appeal (supra). Therefore, this finding of fact crystallizes and attains finality. Therefore on the basis of this factual finding the Ld. CIT(A) has allowed the claim of the assessee by relying on the decision of Hon'ble Supreme Court in the case of

(i) Vijaya Bank vs. CIT (2010) 322 ITR 166 (SC)

(ii) Southern Technologies Ltd. vs. CIT (2010) 320 ITR 577 (SC)

(iii) T.R.F. Ltd. vs. CIT (2010) 323 ITR 397 (SC)

6. We note that the Ld. CIT(A) has taken note of the decision/ratio of Hon'ble Supreme Court in the case of Vijaya Bank (supra) and at page 18-21 of the impugned order has reproduced the analysis of the case which is as under:

"Bad debt - Write-off - After 1st April, 1989, if an assessee debits an amount of doubtful debt to the profit and loss account and credits the asset account like Sundry Debtors' Account, it could constitute a write off of an actual debt and it is not necessary to square off each individual account.

Detailed facts & decision in Vijaya Bank (supra)

For the A. Y.1994-95, the Assessing Officer disallowed a sum of 7,10,47,161 which the assessee- bank had reduced from loans and advances or debtors on the ground that the impugned bad debt had not been written off in an appropriate manner as required under the accounting principles. According to him, the impugned bad debt supposedly written off by the assessee-bank was mere provision and the same could not be equated with the actual write off of the bad debt, as per the requirement of S. 36(1)(vii) of the Income-tax Act, 1961 ('the 1961 Act' for short) read with explanation thereto which Explanation stood inserted in the 1961 Act by the Finance Act, 2001, with effect from April 1, 1989. The assessee carried the matter in appeal before the Commissioner of Income-tax (Appeals) ['CIT(A)', for short], who opined that it was not necessary for the purpose of writing off of bad debts to pass corresponding entries in the individual account of each and every debtor and that it would be sufficient if the debit entries are made in the profit and loss account and corresponding credit is made in the 'bad debt reserve account'. Against the decision of the Commissioner of Income-tax (Appeals) on this point, the Department preferred an appeal to the Income-tax Appellate Tribunal ('Tribunal', for short). Before the Tribunal, it was argued on behalf of the Department that write-off of each and every individual account under the head 'Loans and advances' or 'debtors' was a condition precedent for claiming deduction u/s.36(1)(vii) of the 1961 Act. According to the Department, the claim of actual write-off of bad debts in relation to banks stood on a *footing different from the accounts of the non-banking assessee(s), though it was not disputed that S. 36(1) (vii) of the 1961 Act covered banking as well as non-banking assessees. According to the assessee once a provision stood created and, ultimately carried to the balance sheet wherein loans and advances or debtors depicted stood reduced by the amount of such provision, then there was actual write-off, because, in the final analysis, at the year end, the so called provision did not remain and balance sheet at the year ended only carried the amount of loans and advances or debtors, net of such provision; made by the assessee for the impugned bad debt. The Tribunal, upheld the above contention of the assessee on three grounds. Firstly, according to the Tribunal, the assessee had rightly made a provision for bad and doubtful debt by debiting the amount of Bad debt to the profit and loss account so as to reduce the profit of the year. Secondly, the provision account so created was debited and simultaneously the amount of loans and advances or debtors stood reduced and, consequently, the provision account stood obliterated. Lastly, according to the Tribunal loans and advances or the sundry debtors of the assessee as at the end of the year lying in the balance sheet was shown as net of 'provision for doubtful debt' created by way of debit to the profit & loss account of the year. Consequently, the Tribunal, on this point, came to the conclusion that deduction u/s.36(1)(vii) of the 1961 Act was allowable.*

On the question whether it was imperative for the assessee each and every individual account and its debtors in its books or a mere reduction in the loans and advances to the extent of the provision for bad and doubtful debt was sufficient, the answer given by the Tribunal was that, in view of the decision of the Gujarat High Court in the case of Vithaldas H Dhanjibhai Bardanwala v. CIT, reported in (1981) 130ITR 95 the Commissioner of Income-tax (Appeals) was right in coming to the conclusion that since the assessee had written off the impugned had in its books by way of a debit to the Profit and Loss Account Simultaneously reducing the corresponding amount from loans and advances or debtors depicted on the asset sides in the balance sheet at the close of the year, the assessee was entitled to deduction u/s.36(1)(vii) of the I. T. Act 1961. This view was not accepted by the High Court which came to the conclusion by placing reliance upon a judgment in the case of ITO v. Wipro Infotech Limited that in view of the insertion of the Explanation, vide the Finance Bill 2001, with effect from April 1. 1989 the decision of the Gujarat High Court in the case of Vithaldas H. Dhanjibhai Bardanwala (supra) no more held the field and, consequently mere creation of a provision did not amount to actual write-off of bad debts.

In the appeals filed against the order of the High Court, the Supreme Court observed that broadly, two questions arose for its determination. The first question that arose for determination was, whether it was imperative for the assessee bank to close the individual account of each debtor in its books or a mere reduction in the loans and advances account or debtors to the extent of the provision for bad and doubtful debt was sufficient.

According to the Supreme Court the first question was considered by it in Southern Technologies Ltd. v. Joint CIT (2010) 320 ITR in which it had an occasion to deal with the first question and in that case it been held that after 1st April 1989 if an assessee debits an amount of doubtful debt to the profit & Loss account and credits the asset account like 'sundry debtors' account, it would constitute a write-off of an actual debt However, if an assessee debits ' provision for doubtful debt' to the profit and loss account and makes a corresponding credit to the current liabilities and provisions on the liabilities side of the balance sheet, then it would constitute a provision for doubtful debt, in the latter case, the assessee would not be entitled to deduction.

In regards to view expressed by the Gujarat High Court in Vithaldas H. Dhanjibhai Bardanwala (supra) and sequent insertion of Explanation in S. 36(1)(vii) w. e.f. April 1, 1989 the Supreme Court clarified that in the aforesaid judgment of the Gujarat High Court, a mere *debit to the profit and loss account was sufficient to constitute actual write-off, whereas 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 amounts of loans and advances/debtors is shown as net of the provisions for the impugned bad debt. According to the Supreme Court, the High Court had lost sight of this aspect in its impugned judgment. The Supreme Court, on the first question, therefore held that the assessee was entitled to the benefit of deduction u/s. 36(1)(vii) of the 1961 Act as there was actual write-off by the assessee in its books.*

Coming to the second question the Supreme Court noted that what is being insisted upon by the Assessing Officer is that mere reduction of the amount of loans and advances or the debtors at the end would not suffice and. in the interest of transparency, it would be desirable for the assessee bank to close each and every individual account of loans and advances or debtors as a pre-condition for claiming deduction u/s.36(1)(vii) of the 1961 Act. This view has been taken by the Assessing Officer because the Assessing Officer apprehended that the assessee-bank might be taking the benefit of deduction u/s.36(1)(vii) of the 1961 twice over. The Supreme Court held that it cannot decide the matter on the basis of apprehensions/ desirability. It is always open to the Assessing Officer to call for the details of individual debtor's account if the Assessing Officer has reasonable grounds to believe that the assessee has claimed deduction, twice over. The Supreme Court observed that the assessee has instituted recovery suits in courts against its debtors. If individual accounts were to be closed, then the debtor /defendant in each of those suits would rely upon the bank statement and contend that no amount is due and payable in which event the suit would be dismissed.

The Supreme Court further observed that according to the Department, it was necessary to square off each individual account failing which there was likelihood of escapement of income from assessment. According to the Department, in cases where a borrower's account is written off by debiting the profit and loss account and by crediting loans and advances or debtors account on the asset side of the balance sheet then as and when in the subsequent years if the borrower repays the loan the assessee will credit the repaid amount to the loans and advances account not to the profit & Loss Account which would result escapement of income from assessment. On the other hand, if bad debt is written off by closing the borrower's account individually, then the repaid amount in subsequent years will be credited to the profit and loss account on which the assessee-bank has to pay tax. The Supreme Court held that although, prima facie, this argument of the Department appeared to be valid, on a deeper consideration, it is not so for three reasons. Firstly, the head office accounts clearly indicated, in the present case, that on repayment in subsequent years, the amounts were duly offered for tax. Secondly, one had/to keep in mind that under the accounting practice, the accounts of the rural branches have to tally with the accounts of the head office. If the repaid amount in subsequent years is not credited to the profit and loss account of the head office, which is ultimately what matters, then there would be a mismatch between the rural branch accounts and the head office accounts. Lastly, in any event, S. 41(4) of the 1961 Act, inter alia, lays down that where a deduction has been allowed in respect of a bad debt or a part thereof u/s. 36(l)(vii) of the 1961 Act, then if the amount subsequently recovered on any such debt is greater than the difference between the debt and the amount so allowed, the excess shall be deemed to the profit and gains of business and, accordingly, chargeable to income-tax as the income of the previous year in which it is recovered. In the circumstances the Supreme Court was of the view that the Assessing Officer was sufficiently empowered to tax such subsequent repayments u/s. 41(4) of the 1961 Act and, consequently, there was no merit in the contention that if the assessee succeeded then it would result in escapement of income from assessment.

The Supreme Court therefore, upheld the judgment of the Tribunal and set aside the impugned *judgment of the High Court."*

7. In the light of the decision of the Hon'ble Supreme Court in the case of Vijaya Bank (supra), when the facts pertaining to this assessee was examined by the Ld CIT(A), wherein it was brought to his notice that a sum of Rs. 94,22,355/- has been reduced from the Sundry Debtors (Asset Side) in the Audited Balance for 31.03.2009 relevant to AY 2009-10 i.e. the year under consideration. Accordingly, it was contended by the assessee that since such provision has been reduced from Sundry Debtors such treatment amounts to write off of the sum in question i.e. Rs.94,22,355/- and hence it cannot be treated as provision and so clause (c) or (i) of Explanation (1) to sub-section (2) of section 115JB of the Act is not attracted and the AO erred in doing so.

8. From a perusal of records, we note that in this case though in the computation of income filed the provision for bad and doubtful debts amounting to Rs. 94,22,355/- had been added back to the total income, however, the Sundry Debtors on the asset side of the Balance Sheet have been reduced by an equivalent amount i.e. Rs.94,22,355; and since such amount of provision having not been transferred to the liability side of the Balance sheet as "current Liabilities and provisions", such provision for bad and doubtful debt is allowable u/s. 36(1)(vi) of the Act.

9. Therefore, in the light of the aforesaid Hon'ble Supreme Court decision in the case of Vijaya Bank (supra), the Ld. CIT(A) has rightly allowed the claim of the assessee. And since it has been found that it was actual write off of bad debts and not provision as erroneously noted by AO, clause (c) or (i) of Explanation (1) to sub-section (2) of section 115JB of the Act will not be attracted. For that legal proposition we rely on the ratio of the decision of this Tribunal in DCIT Vs. The Peerless General Finance & Investments Co. Ltd., ITA No. 50/Kol/2009 for AY 2002-03 dated 03.12.2020 wherein it was held as under:

"6. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the short issue that has been raised before us is pertaining to the AO's action wherein while computing the book profit u/s. 115JB of the Act, he added back the provision for diminution in value of investments and the amount of NPA amounting to Rs.29,81,59,433/- and Rs.19,57,60,485/- respectively which were debited by the assessee in P&L Account. So, the question is whether this action of AO can be justified by invoking clause (c) or (i) of Explanation

(1) to sub-section (2) of section 115JB of the Act which reads as under:

"Explanation (1) - For the purpose of this section, "book profit" means the profit as shown in the statement of profit and loss for the relevant previous year prepared under sub-section (2), as increased by -.

(a) ....

(b) …..

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d) …..

(e) ....

f) ....

(g) ….

(h) ….

(i) the amount or amounts set aside as provision for diminution in the value of any asset"

7. We note that the Ld. CIT(A) has correctly held that while computing book profit, provision for diminution in value of investments and provision for non-performing asset, since were not liabilities, clause "(c)" in Explanation (1) to sub-section (2) of section 115JB of the Act was not attracted. And hence, he rightly directed the AO not to add back these amounts to the book profit. However, the question now before us is whether clause (i) of Explanation (1) to sub-section (2) of section 115JB of the Act could be attracted in the facts of this case. We note that sub-clause (i) of Explanation (1) to section 115JB of the Act has been inserted by the Finance Act, 2009, with retrospective effect from 01.04.2001 and it is noted pertains to the amounts set aside as provision for diminution in value of any assets. In this case, we note that the admitted fact is that assessee has shown provision for diminution in value of investment to the tune of Rs.29,81,59,433/- and provision for NPA amounting to Rs.19,57,60,485/- which was debited to the P&L Account. And since both the amounts are in respect of investments and asset (non-performing assets) pertained to the asset item in the Balance Sheet, so, per-se clause (i) of Explanation (1) of section 115JB of the Act is attracted. However, the assessee's case is that though these two items have been shown as provision "it is not a provision but it is actual write off", therefore, clause (i) of Explanation (1) to sub-section (2) of section 115JB of the Act is not applicable and for urging so, the assessee has relied on the decision of the Hon'ble Gujarat High Court in the case of Vodafore Essar Gujarat Ltd. (supra) wherein the Hon'ble High Court while deciding a similar issue had held as under:

"13. Thus, the Supreme Court in case of HCL Comnet Systems & Services Ltd. (supra) held that clause (c) of the explanation would apply to the debt payable by the assessee. In such a case, if the amount is set aside as a provision and provision is made for meeting a liability other than ascertained liability, clause (c) would come into force and such provision would be added in computation of book profit for the purpose of 115JA of the Act. This clause, however, would not cover a provision made for a debt which is receivable by the assessee. It was observed that the provision for bad and doubtful debts which is made to cover up probable diminution in the value of the asset, cannot be said to be a provision for liability because even if the debt is not recoverable, no liability could be fastened on the assessee.

14. To overcome such view of the Supreme Court, the Revenue added clauses (g) and (i) to the explanations in section 115JA and 115JB of the Act respectively with retrospective effect. With such addition now the book profit for the purpose of section 115JB of the Act would be increased by the amount or amounts set aside as provisions for diminution in the value of any asset. The explanatory note for introduction of such amendment clarified that the new clause (i) was inserted "so as to provide that if any provision for diminution in the value of any asset has been debited to the profit and loss account, it shall be added to the net profit as shown in the profit and loss account for the purpose of computation of book profit. " This legislative change thus was clearly necessitated on account of the judgment of the Supreme Court in case of HCL Comnet Systems & Services Ltd. (supra) holding that under clause(c) to the explanation any provision for bad or doubtful debts for diminution in the value of any asset cannot be added to the book profit of the assessee.

15. This Court in Deepak Nitrite Ltd. (supra), as noted, held that in view of such statutory change, the decision of Supreme Court in case of HCL Comnet Systems & Services Ltd. (supra), would allow the Revenue to make such addition. Delhi High Court in case of CIT v.

ILPEA Paramount (P.) Ltd. [2010] 192 Taxman 65/[2011] 336ITR 54 had come to similar conclusion. Seen from this light and in this context, the decision in case of Deepak Nitrite Ltd. (supra), lays down the correct proposition.

16. We may however, appreciate the 'implication of the ratio laid down by the Supreme Court in case of Vijaya Bank (supra), on the true interpretation of clause(i) to the explanation 1 and the decisions of Karnataka High Court in cases of Yokogawa India Ltd. (supra) and Kirloskar Systems Ltd. (supra). Vijaya Bank (supra) was a case arising under section 36(1)(vii) of the Act. The assessee before the Supreme Court was bank. The issue considered by the Supreme Court was whether it was imperative for the assessee bank to close the individual account of each of its debtors in its books or a mere reduction in the loans and advances or debtors on the asset side of its balance sheet to the extent of the provision for bad debt, would be sufficient to constitute a write-off. In this context, the Supreme Court considered the issue as to the manner in which the actual write off takes place under the accounting principle. It was noticed that prior to 1.4.1989 amendment in section 36(1)(vii), even the provision for the bad debt could be treated as write off. After 1.41989 however, a mere provision for bad debt would not be entitled to deduction under section 36(1)(vii) of the Act. In context of such statutory change, the Supreme Court referred to the decision in case of Southern Technologies Ltd. Vs. Jt. CIT (2010) 320 ITR 577/187 Taxman 346, in which the following observations were made:

"Prior to April, 1, 1989, the law, as it then stood, took the view that even in cases in which the assessee(s) makes only a provision in its accounts for bad debts and interest thereon and even though the amount is not actually written off by debiting the profit and loss account of the assessee and crediting the amount to the account of the debtor, the assessee was still entitled to deduction under section 36(1)(vii). (See CIT V. Jawala Prasad Tiwari (1953) 24 ITR 537 (Born.) and Vithaldas H Dhanjibjai Bardanwala v. CIT (1981) 130 ITR 95 (Guj.)] Such state of law prevailed up to and including the assessment yeatr 1988-89. However, by insertion (with effect from April 1, 1989) of a new Explanation in section 36(1)(vii), it has been clarified that any bad debt written off as irrecoverable in the account of the assessee will not include any provision for bad and doubtful debt made in the accounts of the assessee. The said amendment indicates that before April 1, 1989, even a provision could be treated as a write off. However, after April 1, 1989, a distinct dichotomy is brought in by way of the said Explanation to section 36(1)(vii). Consequently, after April 1, 1989, a mere provision for bad debt would not be entitled to deduction under Section 36(1)(vii). To understand the above dichotomy, one must understand 'how to write off. If an assessee debits an amount of doubtful debt to the profit and loss account and credits the asset account like sundry debtor's account, it would constitute a write off of an actual debt. However, if an assessee debits 'provision for doubtful debt' to the profit and loss account and makes a corresponding credit to the 'current liabilities and provisions' on the liabilities side of the balance-sheet, then it would constitute a provision for doubtful debt. In the latter case, the assessee would not be entitled to deduction after April 1, 1989. "

17. The Supreme Court (in Vijaya Bank) further observed as under:

"7. One point needs to be clarified. According to Shri Bishwajit Bhattacharya, learned Additional Solicitor General appearing for the Department, the view expressed by the Gujarat High Court in the case of Vithaldas H. Dhanjibhai Bardanwala [supra] was prior to the insertion of the Explanation vide Finance Act, 2001, with effect from 1st April, 1989, hence, that law is no more a good law. According to the learned counsel, in view of the insertion of the said Explanation in Section 36(1)(vii) with effect from 1st April, 1989, a mere debit of the impugned amount of bad debt to the Profit and Loss Account would not amount to actual write off. According to him, the Explanation makes it very clear that there is a dichotomy between actual write off on the one hand and a provision for bad and doubtful debt on the other. He

submitted that a mere debit to the Profit and Loss Account would constitute a provision for bad and doubtful debt, it would not constitute actual write off and that was the very reason why the Explanation stood inserted. According to him, prior to Finance Act, 2001, many assessees used to take the benefit of deduction under Section 36(1)(vii) of 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 mere reduction of profits by debiting the amount to the Profit and Loss Account per se would not constitute actual write off. To this extent, we agree with the contentions of Shri Bhattacharya. However, as stated by the Tribunal, in the present case, besides debiting the Profit and Loss Account and creating a provision for bad and doubtful debt, - the assessee-Bank. had correspondingly /simultaneously obliterated the said provision from it's accounts by reducing the corresponding amount from Loans and Advances/debtors on the asset side of the Balance Sheet and. end of the year, the figure in the loans and advances or the debtors on the asset side of the Balance Sheet was shown as net of the provision "for impugned bad debt". In the judgment of the Gujarat High Court in the case of Vithaldas H Dhanjibhai Bardanwala [supra]. A mere debit to the Profit and Loss Account was sufficient to constitute actual write off whereas, after the explanation, the assessee(s) is now required not only to debit the Profit and Loss Account but simultaneously also reduce loans and advances or the debtors from the asset side of the Balance Sheet to the corresponding amount so that, at the end of the year, the amount of loans and advances/ debtors is shown as net of provisions for impugned bad debt. This aspect is lost sight of by the High Court in it's impugned judgement. In the circumstances, we hold, on the first question, that the assessee was entitled to the benefit of deduction under Section 36(1)(vii) of 1961 Act as there was an actual write off by the assessee in it's Books, as indicated above."

18. It can thus be seen that in case of Southern Technologies Ltd. (supra), the Supreme Court explained that if an assessee debits an amount of doubtful debt to the Profit and Loss account and credits the asset account like sundry debtor's account, it would constitute a write-off of an actual debt. On the other hand, if an assessee debits provision for doubtful debt to the Profit and Loss account and makes a corresponding credit to the current liabilities and provisions on the liabilities side of the balance sheet, then it would constitute a provision for doubtful debt and in such a case after 1.4.1989, the assessee could claim no deduction under section 36(1)(vii) of the Act.

19. This principle was further clarified in case of Vijaya Bank (supra) by observing that in case on hand, the assessee besides debiting the profit and loss account and creating a provision for bad and doubtful debt, had simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans an£ advances/debtors on the asset side of the balance sheet and consequently, at the end of the year, the figure of loans and advances or the debtors on the asset side of the balance sheet was shown as net of the provision for bad debt. Thereafter, the Supreme Court rejecting the Revenue's contention that for the bank to take benefit of section 36(1)(vii), must close the account of the debtors, decided the question in favour of the assessee.

20. Above decision of Supreme Court in case of Southern Technologies Ltd. (supra) and Vijaya Bank (supra) thus bring out a clear distinction between a case where the assessee may make a provision for doubtful debt and a case where the assessee after creating such a provision for bad and doubtful debt by debiting in Profit and Loss account also simultaneously removes such provision from its account by reducing the corresponding amount from the loans and advances on the asset aside of the balance sheet. The later would be an instance of write- off and not a mere provision.

21. Karnataka High Court in case of Yokogawa India Ltd. (supra) applying such principle found that case on hand was one of a debt which was an amount receivable by the assessee and *not any liability payable by the assessee and observed that clause (c) of the explanation to section 115JA/115JB, would not apply. In context of applicability of clause (i) to the explanation, relying on the decision of Supreme Court in case of Vijaya Bank (supra), the Court observed that there is a dichotomy between actual write off and provision for bad and doubtful debt. A mere debit to the Profit and Loss account would constitute a bad and doubtful debt but it would not constitute actual write-off. However, if simultaneously such amount is obliterated from the accounts by reducing corresponding loans and advances on the asset side, the same would amount to a write off. It was concluded as under:*

" .... Therefore, after the Explanation the assessee is now required not only to debit the P &L A/c 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 s.115JA or JB is not at all attracted."

22. In case of Kirloskar Systems Ltd. (supra), the Karnataka High Court adopted the same principle.

23. By way of culmination of above judicial pronouncements and statutory provisions, the situation that arises is that prior to the introduction of clause (i) to the explanation to section 115JB, as held by the Supreme Court in case of HCL Comnet Systems & Services Ltd. (supra), the then existing clause (c) did not cover a case where the assessee ,made a provision for bad or doubtful debt. With insertion of clause (i) to the explanation with retrospective effect, any amount or amounts set aside for provision for diminution in the value of the asset made by the assessee, would be added back for computation of book profit under section 115JB of the Act. However, if this was not a mere provision made by the assessee by merely debiting the Profit and Loss Account and crediting the provision for bad and doubtful debt, but by simultaneously obliterating such provision from its accounts by reducing the corresponding amount from the loans and advances on the asset side of the balance sheet and consequently, at the end of the year showing the loans and advances on the asset aside of the balance sheet as net of the provision for bad debt, it would amount to a write off and such actual write off would not be hit by clause (i) of the explanation to section 115JB. The judgment in case of Deepak Nitrite Ltd. (supra) fell in the former category whereas from the brief discussion available in the judgment it appears that case of Indian Petrochemicals Corpn. Ltd. (supra), fell in the later category.

24. Viewed from this angle and subject to the observations and clarifications made above, in our view, there is no conflict between the two judgments and both operate in different fields. Reference is answered accordingly. "

8. We note that in the above judgment, the Hon'ble High Court has considered the following judgments:

i. CIT v. Deepak Nitrite Ltd. [Tax Appeal o. 1918 of 2009, dated 17-8-2011] (para 4)

ii. CIT v. HCL Comnet Systems & Services Ltd. (2008) 305 ITR 409/174 Taxman 118 (SC)

iii. CIT v. Indian Petrochemicals Corpn. Ltd. [2016] 74 taxmann.com 163 (Guj.) (para 4),

iv. CIT v. Yokogawa India Ltd. [2012] 17 taxmann.com 151204 Taxman 305 (Kar.) (para 4),

v. CIT v. Kirloskar Systems Ltd. [2013] 40 taxmann.com 124/[2014] 220 Taxman 1 CKar.)

(para 4),

vi. Vijaya Bank v. CIT [2010] 323 ITR 166/190 Taxman 257 (SC) (para 4),

vii. CIT v. ILPEA Paramount (P.) Ltd. [2010] 192 Taxman 65/[2011] 336 ITR 54 (Delhi) (para 15) and

viii. Southern Technologies Ltd. v. Jt. CIT [2010] 320 ITR 577/187 Taxman 346 (SC) (para 16).

9. We note that after considering the aforesaid judgments rendered in the above case laws, the Hon'ble High Court of Gujarat held that if the provision for diminution in value of investment is not a mere provision made by the assessee by merely debiting the profit and loss account and makes a credit to the "current liabilities and provisions" on the liabilities side of the balance sheet, then it would constitute provision for bad and doubtful debt, but if an assessee debits an amount of doubtful debt to the profit and loss account and simultaneously obliterate such provision from its account by reducing the corresponding amount from the loans and advances on the asset side of the balance sheet and consequently, at the end of the year shows the loans and advances on the asset side of the balance sheet as net of the provision for bad debt, it would amount to an actual write off and such actual write off would not attract clause (i) of the Explanation to sub-section (2) of section 115JB of the Act.

10. When we apply this law to the facts of this case, Ld. AR Shri S. K. Tulsiyan, Advocate drew our attention to the P&L Account for the year ending on 31.03.2002 which is found placed at page 34 of the paper book wherein we note that the assessee has debited "provision for diminution in value of investments amounting to Rs.29,81,59,433/- which is shown as Rs.298.16 million in the Balance Sheet and provision for NPA amounting to Rs.19,57,60,485/- has been shown as Rs.195.76 million". According to Ld. AR, the said provision for diminution in value of investments and provision for non-performing assets was not a mere provision debited in the P&L Account but is an actual write off, since the said provisions were simultaneously removed from the corresponding asset side of the Balance Sheet and for that he drew our attention to page 35 of the paper book wherein we note that a sum of Rs.2,111.92 million was reduced from investments which has been computed as under:

Provision for diminution of Investments	Rs. In	Page
	Million	No.
Opening Balance (page 35)	2125.74	35
Add: Provision for current year (FY 2001-	298.16	35
02)	2423.90	
	312.07	35,

Less: Write back of provision	2111.82	2,
		26

SCHEDULE - 6

INVESTMENTS (TRADE)

	As at 31.03.2002
) Investment Fixed Deposits i) Investment in Mutual Funds ii) Investment in Postal savings v) Investment in shares-Subsidiaries and Associate Companies f) Investment in shares-Other companies vi) Investment in debentures ài) Investments in PSU Bonds àii) Investments in Government Securities Less: provision for Diminution in value of investments Rupees in Million	Rs.13375075064.56 Rs. 4448034179.70 Rs. 376614266.17 Rs. 222506969.00 Rs. 2678873378.26 Rs. 3555071423.29 Rs. 28465712148.14 Rs. 18096837590.63 Rs. 71218723999,75 Rs. 2111824110.95 Rs. 69106899888.80 Rs. 69106.90

11. Thus we note from a perusal of page 34 of paper book that Rs.298.16 million which was the amount shown as provision for diminution in the value of investment for the current year AY 2002-03 (FY 2001-02) was debited to the Profit & Loss Account. Further, we note that provision for diminution in the value of Investments has been written back during the year which amounts to Rs.312.08 million. This amount it can be seen from a perusal of page 2 of the paper book that it has been credited in the Profit and Loss A/c under the head 'Miscellaneous

Income'. Moreover, our attention was drawn to page 26 of paper book, which is the Schedule - 9 of the Audited Accounts wherein Point No.13(f) we note it has been clearly mentioned that Miscellaneous Income include 'Provision for Diminution in Investments' and 'Loans and Advances' being no longer required written back amounting to Rs.454.4l million.

The break up of Rs.454.41 million is as follows:

Provision for Diminution in Investments - Rs.312.07 million

Provision for Non-Performing Assets - Rs.139.34 million

Rs.451.41 million

12. We note from a perusal of page 35 of paper book that this closing balance of Rs.2111.82 million was reduced from Schedule 6 - Investments (Trade) of the audited accounts. Thus, we note that the Provision of Rs.298.16 million created during the year was debited in the Profit and Loss A/c for the year and Provision written back during the year amounting to Rs.312.08 million was credited in the Profit and Loss A/c. This shows that it was not only a mere creation of 'Provision for diminution in Investments' by debiting the Profit and Loss account but simultaneously the corresponding amount from Investments shown on the Asset side of the Balance Sheet was also reduced/adjusted. In other words, the Investments in the Asset Side that was recorded in the books were the net of provision. Thus, in view of the above facts, the said Provision for diminution in Investments would amount to an actual "write off' of Provision from the Assets side and therefore would not attract clause (i) of the Explanation to sub-section (2) of section 115JB of the Act as held by the Hon'ble Gujarat High Court in the case of Vodafone Essar (supra) since Assets side of the Balance Sheet has also been accordingly reduced in the present case of the assessee, so, we agree that provision for diminution in investment was not a mere provision but it was actual write off and so, clause (i) of Explanation (1) of sub-section (2) of section 115JB of the Act is not attracted to the facts of this case and so we uphold the action of Ld CIT(A) on this issue.

13. Next coming to the event of non-performing asset is concerned, our attention was drawn to page 34 of paper book the assessee had created 'Provision for non-performing assets' amounting to Rs.19,57,60,485/- and debited the same in the Profit and Loss Account for the year ending 31-03- 2002. Our attention was invited to 'Schedule 7 - Current Assets, Loans and Advances', of the Audited Accounts which is found placed at page 36 of the paper book wherein we note that after deducting the accumulated Provision for non- performing assets amounting to Rs.2620.53 million, the closing balance of Loans and Advances was arrived at Rs.5576.16 million.

14. And thereafter, the Ld. AR drew our attention to page 36 of the paper book schedule 7 which shows current assets, loans and advances and pages 6 and 7 of the written statement which is reproduced as under:

Non-performing asset (bad debt). The opening provision of Rs.2564.11 as on 01.04.2011 million was arrived at as under:

Opening Balance as on 01.04.2001 (refer Schedule-7 of the Audited Accounts, page 36 of the paper book)	Rs. In Million	Rs. In million

i) Loan to State Govt./Govt. Company, Undertaking dept. etc. ii) Loan secured against Mortgage/hypothecation of properties	2.98	
Shares/Vehicles (incl. subsidiaries)	1144.6 5	
iii)Unsecured loan to Field Force & others against Personal guarantee	3.83	
iv) Loan to Certificate holders	19.93	
v) Loan/deposit to companies (incl. Subsidiaries)	1056.8 6	
vi) Amount recoverable in cash or kind or for value to be received (unsecured)	281.61	
vii) Amount receivable from subsidiaries	46.94	
viii) Sundry Deposit	7.31	
Sum total		2564.11
Add: Provision made in the current year (FY 2001-02)(Note 1)		195.76
Total		2759.87
Less: Write back of Provision (Note 2)		(139.34)
Closing provision as on 31.03.2002		2620.53

The break up of Rs.2620.53 million is as follows: (Refer schedule - 7 of Audited Accounts, page 36)

Particulars	Rs. In Million	Rs. In million
i) Loan to State Govt./Govt. Company, Undertaking depot. Etc.	2.98	
ii) Loan secured against Shares/Vehicles (incl. subsidiaries)	1227.3	
iii) Consumer durable Loan	0.03	
iv) Unsecured loan to Field force & others against personal guarantee	3.84	
v) Loan to Certificate holders	20.93	
vi) Loan/deposit to companies (incl. subsidiaries)	1023.2 1	
vii) Amount recoverable in Cash or kind or for value to be received (unsecured)	278.3	
viii) Amount receivable from subsidiaries	56.63	
ix) Sundry Deposit	7.31	
TOTAL		2620.53

15. Thus, we note from page 34 of paper book that the provision for NPA of Rs.19,57,60,485/- was debited from the profit and loss account and this was simultaneously reduced from corresponding asset side as follows:

Opening accumulated provision in respect of bad debt	2564.11	(Page 36)
Add: provision created in AY 2001-02	195.76	(Page 2 & 36)
	2759.87	
Less: Write back of provision	139.34	(Page 36, 2 & 26)
Closing accumulated provision	2620.53	

16. The Ld. AR explained that this write back of the provision of Rs.139.34 million was credited to the P&L Account under the head 'Miscellaneous Income' and drew our attention to page 2 and 26 of the paper book to show that total provision for diminution in investment and loans and advances being no longer required is Rs.451.41 million which break up (Diminution in investment is Rs.312.07 million and provision for non-performing assets is Rs.139.34 million and total is Rs.451.41 million) (supra). We note that the closing balance of Rs.2620.53 million was reduced from Schedule 7 - Loans and Advances of the audited accounts in this regard, refer page 36 of paper book. The Provision of Rs.195.76 million created during the year was debited in the Profit and Loss A/c for the year and Provision written back during the year amounting to Rs.139.34 million was credited in the Profit and Loss A/c. This clearly suggests that not only a mere 'Provision for Non-Performing Assets' was created by the assessee by debiting the Profit and Loss account but simultaneously the corresponding amount from 'Loans and Advances' shown on the Asset side of the Balance Sheet was also reduced/adjusted. In other words, the 'Loans and Advances' were recorded in the books as net of provision. Thus, in view of the above facts, the said Provision for diminution in non-performing assets would amount to an actual write off of Provision from the Assets side and therefore would not get attracted by clause (i) of the Explanation to sub-section (2) of section 115JB of the Act as held by the Hon'ble Gujarat High Court in the case of Vodafone Essar (supra) since the Assets side of the Balance Sheet has also been accordingly reduced in the present case of the assessee. Thus, we note that the accumulated closing provision of Rs.2620.53 million was reduced from the current assets, loans and advances which are evident from page 36 of the paper book, which we find to be correct. Thus, the said provision of Rs.195.76 million was an actual write off and, therefore, it does not attract clause (i) of Explanation (1) of section 115JB of the Act. And, therefore, the assessee succeeds and the question of law forwarded by the Hon'ble High Court is answered in favour of assessee and consequently the action of Ld. CIT(A) on this issue is confirmed on the ground discussed supra."

10. In the light of the aforesaid decision of this Tribunal in the Peerless General Finance & Investments Co. Ltd. (supra), we note that the issue is no longer res integra and the Ld. CIT(A) rightly allowed the claim of assessee since the said provision of Rs.94,22,355/- was an actual write off and therefore, it does not attract clause (i) or (c) of Explanation (1) of sub-section (2) of section 115JB of the Act. Therefore, we find no infirmity in the order passed by the Ld. CIT(A) which is confirmed. Appeal of revenue is dismissed.

11. In the result, the appeal of the Revenue is dismissed.

Order is pronounced in the open court on 30th July, 2021.

*****

Customized Notes