

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 5521/Mum/2025
Assessment Year : 2016-17

DCIT, Circle-2(1)(1), Room No. 561, 5 th Floor, Aayakar Bhavan, Mumbai-400020.	vs.	Central Bank of India, Mumbai Main Office, M.G. Road, Fort, Greater Bombay, Mumbai-400023. PAN : AAACC2498P
(Appellant)		(Respondent)

For Assessee :	Shri Nitesh Joshi
For Revenue :	Shri Virabhadra S. Mahajan, Sr.DR

Date of Hearing :	10-11-2025
Date of Pronouncement :	12-11-2025

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['Ld. CIT(A)'], dated 25-02-2025, pertaining to Assessment Year (AY) 2016-17, wherein the Revenue has taken the following grounds of appeal:

"1.On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the penalty of Rs. 305,49,63,285/- levied under section 271(1)(c) of the Act by holding that the provisions of Section 115JB of the Income Tax Act, 1961 are not applicable to the assessee-bank"

2. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in overlooking the specific amendment brought by the Finance Act, 2012, to Section 115JB(2), which explicitly included entities preparing financial statements under their governing Acts, such as the Banking Regulation Act, 1949, within the ambit of Minimum Alternate Tax (MAT)."

2. At the outset, it is noted that there is a delay of 126 days in filing the appeal by the Revenue, as pointed out by the Registry. In this connection, the Revenue has filed a petition for condonation of delay. After hearing both the parties and perusing the facts placed on record, we find that there was reasonable cause for the delay in filing the present appeal and hence, the delay is hereby condoned and appeal is admitted for adjudication.

3. Briefly the facts of the case are that the assessee filed its original return of income on 30-11-2016 declaring business loss under the normal provisions of the Income Tax Act, 1961 ('the Act') at Rs. 61,38,64,687/- and income u/s. 115JB of the Act at Rs. 2,49,17,75,702/-. Thereafter, a revised return of income was filed on 27-03-2018 declaring total loss at Rs. 73,43,78,031/- as per the normal provisions of the Act and book profit at Rs. 2,48,49,40,847/- as per section 115JB of the Act. The case was selected for scrutiny and assessment proceedings were completed u/s 143(3), determining total taxable income at Rs. 6,65,66,61,085/- under the normal provisions of the Act and Rs. 41,77,22,92,342/- u/s. 115JB of the Act.

4. The assessee carried the matter in appeal before the Ld.CIT(A). The Ld.CIT(A), Mumbai vide his order dt. 05-12-2019 confirmed the addition of Rs. 14,31,45,93,495/- on account of bad debts written-off u/s. 115JB of the Act.

5. Subsequently, order u/s. 271(1)(c) of the Act dt. 17-02-2022 was passed by the AO, wherein he levied penalty of Rs 3,05,49,64,285/- in respect of disallowance of deduction for bad debts written-off amounting to Rs. 14,31,45,93,495/- while computing book profits u/s. 115JB of the Act.

6. The assessee carried the matter in appeal before the Ld.CIT(A)-NFAC, who vide his order dt. 20-05-2022, dismissed the appeal of the assessee. Thereafter, the assessee carried the matter in appeal before the ITAT, Mumbai, wherein the Co-ordinate Bench of the Tribunal vide its order dt. 22-07-2022, restored the matter to the file of the Ld.CIT(A) for fresh adjudication.

7. Thereafter in terms of the impugned order dt. 25-02-2025, the Ld.CIT(A) relied on the order of the Co-ordinate Bench of the Tribunal in assessee's own case in ITA No. 3740/Mum/2018 for the AY. 2013-14 and following the said decision of the ITAT, Mumbai, held that the provisions of section 115JB of the Act are not applicable in the case of the assessee and accordingly, held that penalty of Rs. 305,49,63,285/- u/s. 271(1)(c) of the Act has become unsustainable and the same is directed to be deleted and the relevant findings of the Ld.CIT(A) reads as under:

“6.1 In this ground of appeal, the Appellant Bank has challenged the imposition of penalty u/s 271(1)(c) on account of disallowance of Rs. 14,31,95,93,495/- while computing the income u/s 115JB of the Act. I have carefully considered the facts of the case, reply submitted by the appellant, the penalty order, judicial precedents on the issue and other material available on record.

6.2 It is noted that while computing book profits u/s.115JB during the year under consideration, the Appellant had written off bad debts of Rs.14,31,45,93,495/-. The same has not been claimed as a deduction u/s. 36(1)(vii) while computing total income under normal provisions of the Act. But the Appellant Bank claimed a deduction of such bad debts written off of Rs. 14,31,45,93,495/- while computing book profits u/s.115JB, which was disallowed by the AO in the assessment order dated 29.12.2018 passed u/s.143(3).

6.3 The Appellant Bank preferred an appeal before the CIT (A). In his appellate order No. CIT(A)-4/e-file-263/ACIT.Cir.2(1)(2)/2018-19 dated 05.12.2019, the Ld. CIT (A) confirmed the addition made by the AO on account of disallowance of deduction of Rs. 14,31,45,93,495/- while computing the book profit u/s. 115JB of the Act with the following observations:

"From the perusal of findings given by the Hon'ble Gujarat High Court, it is evident that insertion of clause (i) to the explanation with retrospective effect, any amount or amounts set aside for provisions for diminution in the value of the assets made by the assessee, would be added back for computation of book profit under section 115JB. The Hon'ble Court further clarified that if this was not a mere provisions made by the assessee by merely debiting the profit and loss account and crediting the provision for bad and doubtful debt, by simultaneously obliterating such provisions 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 assets side of the balance sheet as net of the provisions 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. In appellant's case it was not demonstrated that the appellant had fulfilled the addition by reducing the assets side of balance sheet, therefore, the case law cited by the appellant will not be applicable.

.....".

.....

Respectfully following judgment of Hon'ble ITAT in the case of Shakti Insulated Wires (P) Ltd (supra) and M/s. Southern Power Distribution Company of Andhra Pradesh Ltd (Supra), the ground raised by the appellant is, dismissed",

6.4 The Appellant Bank, in its reply filed in response to the notice of hearing u/s 250, has stated that it has not furnished any inaccurate particulars. The Appellant submitted that "inaccurate particulars" has not been defined anywhere in the Act. It was further submitted that in Webster's Dictionary, the word "inaccurate" has been defined as: "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript." The word "inaccurate" signifies a deliberate act or omission on behalf of the assessee. The Appellant has contended that as per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account, and therefore, the word "particulars" used in Section 271(1)(c) would embrace the meaning of the details of the claim made. Based on this, it has been claimed that the term "inaccurate particulars" must mean the details supplied in the Return of income, which are not accurate, not exact or correct, not according to truth or erroneous. The Appellant Bank submitted that penalty cannot be imposed u/s. 271(1)(c) in cases where the assessee provides a bonafide explanation for the claims made in the return of income and where the assessee has disclosed all facts and details relating to the same. In support of its claim, the Appellant has also relied on certain judicial precedents, most notably the decision of hon'ble Supreme Court in the case of CIT v. Reliance Petroproducts Ltd. [2010] 322 ITR 158 (SC). The Appellant also relied over the decision of PCIT v. Dhariwal Industries Ltd. (Bombay HC) (ITA No. 1133/1136/1129 of 2016 dated Sept 4, 2018], and CIT v. U.P. State

Bridge Corporation Ltd. (2018) 97 taxmann.com 278 (All). It has also relied up on the decision in the case of CIT v. Dalmia Dyechem Industries Ltd. (2015) 377 ITR 133 (Bom.), wherein the Hon'ble Bombay High Court held that the Assessing Officer must render a conclusive finding that there was an active concealment or deliberate furnishing of inaccurate particulars and if interpretation placed by the assessee on the provisions of law while taking the actions in question cannot be considered dishonest, mala fide and amounting to concealment of facts, no penalty can be levied.

6.5 Further, in its submissions dated 03.02.2025, the appellant has stated that as held by the Special Bench of hon'ble ITAT, Mumbai bench in its own case for the A.Y. 2013-14, it is not a "company" to which second proviso to Section 129(1) of the Companies Act, 2013 (18 of 2013) is applicable and hence, the provisions of Section 115JB of the I.T Act, are not applicable to the Bank. In this regard, the referred order dated 06.09.2024 of the Special Bench of ITAT, Mumbai, in ITA 3740/Mum/2018, is perused. It is noted that in the said decision, the hon'ble ITAT held that:

"59. Thus, the aforesaid notification read with provision of Section 194A(3), makes it clear that even Government of India considers the above entities separate and distinct from banking companies. Once under the Income Tax Act, Legislature itself has made a distinction for the aforesaid banks including the assessee are not covered as banking company, then, this further buttresses the point that these banks are separate and distinct from other banking companies.

60. Accordingly, the question referred to Special Bench is decided in favour of the assessee banks that clause (b) to sub section (2) of section 115JB of the Income-tax Act inserted by Finance Act, 2012 w.e.f. 1-4-2013, that is, from assessment year 2013-14 onwards, are not applicable to the banks constituted as 'corresponding new bank' in terms of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and therefore, the provision of Section 115JB cannot be applied and consequently, the tax on book profits (MAT) are not applicable to such banks."

6.6 In view of the above ruling, tax on book profits (MAT) is not applicable on the appellant. As such, the addition itself, made by the AO on account of disallowance of Rs. 14,31,95,93,495/- while computing the income u/s 115JB of the Act, is not sustainable in the case of the appellant, and hence, the penalty under consideration in the present appeal, imposed on the disallowance while computing the income u/s 115JB made cannot be upheld.

6.7 Considering the above, it is held that the penalty of Rs. 305,49,63,285/- on the Appellant Bank u/s 271(1)(c) of the Act has become unsustainable after the decision of Special Bench of ITAT in the case of appellant itself (Supra), and therefore, the same is directed to be deleted. Ground of appeal no. 1 is allowed.

7. Ground of appeal no.2 is general in nature and does not require any adjudication.

8. In the result, appeal against the Penalty order u/s. 271(1)(c) of the Act, for A.Y. 2016-17 is hereby "allowed".

8. Against the said order and findings of the Id CIT(A), the Revenue is in appeal before us.

9. During the course of hearing the Ld. DR submitted that the Department has not accepted the decision of the Special Bench of the Tribunal in ITA No. 3740/Mum/2018 for the AY. 2013-14 dt. 06-09-2024 and an appeal has been filed before the Hon'ble High Court and, therefore, to maintain consistency in the approach of the Revenue, the present appeal has been filed.

10. Per contra, the Ld. AR taken us through the consolidated order passed by the Coordinate Bench dt. 22-08-2025 in the context of ITA No. 1054/Mum/2018 pertaining to impugned AY. 2016-17 and our reference was drawn to the findings of the Co-ordinate Bench of the Tribunal at paragraph No. 72, which reads as under:

“72. The next issue arising in assessee's appeal pertains to the applicability of provisions of section 115-JB of the Act to the assessee's case. Since a similar issue has already been decided in the assessee's appeal for the assessment year 2013-14, accordingly, our findings/conclusions as rendered therein shall apply mutatis mutandis. As a result, Ground no.2A raised in assessee's appeal is allowed. The issues arising in Ground no.2B, raised in the assessee's appeal, are rendered academic in view of our aforesaid findings, and therefore, are kept open.”

11. Further, our reference was drawn to the findings of the Co-ordinate Bench of the Tribunal in the aforesaid consolidated order in context of ITA No. 3740/Mum/2018 for the AY. 2013-14 and the relevant findings are contained at paragraphs No.17 and 18, which reads as under:

“17. Ground no.3A, raised in assessee's appeal, pertains to the applicability of provisions of section 115-JB of the Act in case of the assessee. We find that this issue is no longer res integra and has been decided in favour of the assessee by the Special Bench of the Tribunal in Union Bank of India vs. Deputy Commissioner of Income-tax, LTU(2), reported in [2024] 115 ITR(T) 481

(Mumbai Trib.) (SB), wherein the assessee was also a party. The relevant findings of the Special Bench, in the aforesaid decision, are reproduced as follows: -

"60. Accordingly, the question referred to Special Bench is decided in favour of the assessee banks that clause (b) to sub section (2) of section 11538 of the Income-tax Act inserted by Finance Act, 2012 w.e.f. 1-4-2013, that is, from assessment year 2013-14 onwards, are not applicable to the banks constituted as 'corresponding new bank' in terms of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and therefore, the provision of Section 11538 cannot be applied and consequently, the tax on book profits (MAT) are not applicable to such banks."

18. Therefore, respectfully following the aforesaid decision of the Special Bench of the Tribunal, Ground no.3A raised in assessee's appeal is allowed. The issues arising in revised Ground no.38, raised in assessee's appeal, are rendered academic in view of our aforesaid findings, and therefore, are kept open."

12. It was accordingly submitted that in the quantum proceedings, the matter has since been decided by the Tribunal in favour of the assessee for the impugned assessment year and where the provisions of section 115JB have been held not applicable, there is no infirmity in the order so passed by the Ld.CIT(A) where he has deleted the levy of penalty u/s 271(1)(c) and, therefore, the order passed by the Ld.CIT(A) be sustained and the appeal of the Revenue be dismissed.

13. We have heard the rival contentions and perused the material available on record. The subject matter of levy of penalty u/s. 271(1)(c) of the Act is in respect of disallowance of deduction for bad debts written-off amounting to Rs. 14,31,45,93,495/- while computing book profits u/s. 115JB of the Act. The Special Bench of the Tribunal where the assessee was a party and thereafter, for the impugned assessment year, it has been held by the Coordinate Bench that the provisions of section 115JB are not applicable in case of assessee bank. Where the provisions of section 115JB are held not applicable, consequently, the tax on book profits are not applicable to such banks and thus, the question of levy of penalty

u/s.271(1)(c) no more survives and deserve to be deleted. We, therefore, do not find any infirmity in the order of the ld CIT(A) wherein he has deleted the penalty so levied by the AO u/s 271(1)(c) of the Act. The grounds of appeal are thus dismissed.

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

Order pronounced in the open court on 12-11-2025

Sd/-

[ANIKESH BANERJEE]
JUDICIAL MEMBER

Mumbai,
Dated: 12-11-2025

TNMM

Sd/-

[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai