

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.234/Bang/2025
Assessment Year: 2015-16

M/s. Bank of Baroda (Erstwhile Vijaya Bank) 2 <sup>nd</sup> Floor, Baroda Corporate Centre Bandra Kurla Complex Bandra (East) Mumbai 400 051  <b>PAN NO : AAACV4791J</b>	<b>Vs.</b>	Addl. CIT LTU Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Smt. Lalitha Rameshwaran, A.R.
<b>Respondent by</b>	:	Sri Rajashekhar M., D.R.

<b>Date of Hearing</b>	:	03.04.2025
<b>Date of Pronouncement</b>	:	04.04.2025

**O R D E R**

**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of the assessee is directed against the order of Id. CIT(A)/NFAC dated 23.12.2024 vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1071453089(1) passed u/s 250 of the Act (in short “The Act”) for the AY 2015-16.

**2.** The assessee has raised the following grounds of appeal:

1. The order of the learned CIT(A) is against the law and facts of the case.
2. The order passed by the learned CIT(A) is against the principles of natural justice.
  - 2.1. The learned CIT(A) passed the impugned order without affording an opportunity of hearing through VC, which was specifically requested by the Appellant.
3. The learned CIT(A) erred in upholding the order of learned Assessing Officer with regard to applicability of the provisions of Section 115JB of Income Tax Act, 1961 to the Appellant Bank.
4. Without prejudice to the above, the learned CIT(A) erred in adding various items to arrive at the book-profit which are beyond the scope of the section.

**3.** The brief facts of the case are that the assessee is in the business of banking filed its return of income for the AY 2015-16 on 28.9.2015 by admitting total income of Rs. Nil. Thereafter the assessee bank had filed its revised return of income by declaring a total income of Rs. Nil by way of claiming additional claim of Rs.200 crores u/s 36(1)(vii) of the Act. Subsequently, the case was selected for scrutiny under CASS and accordingly notices u/s 143(2) as well as 142(1) of the Act were issued along with the questionnaire calling for various details in order to verify the claims made by the assessee in the return of income. The AO finally passed the assessment order by assessing on the total income of Rs.1750,77,68,383/- under the regular provisions and also held that the provisions of section 115JB of the Act was applicable to the assessee bank and determined the book profit at Rs.447,95,02,243/-.

**3.1** Thereafter, the assessee bank preferred an appeal against the said original assessment order before the Id. CIT(A). The Id. CIT(A) vide his appellate order dated 31.12.2018 partly allowed the appeal of the assessee.

**3.2** The aforesaid order of Id. CIT(A) was again challenged before the ITAT by both the assessee bank and by the revenue. The ITAT vide its order dated 25.4.2023 for the impugned assessment year arising out of ITA Nos.321 and 528/Bang/2019 set aside and restored back the following issues to the file Id. CIT(A) for fresh adjudication:

- i. Applicability of MAT provisions u/s 115JB of the Act (ground No.7 before the ITAT).
- ii. Adjustment made in computation of book profits u/s 115JB of the Act (ground No.8 before the ITAT).

**3.3** Before the ld. CIT(A), the assessee bank made a detailed submission and also requested for a personal hearing through VC before adjudicating the appeal. However, the ld. CIT(A)/NFAC vide the impugned order dated 23.12.2024 upheld the order of AO on the aforesaid issues and also did not afford any personal hearing through VC as requested.

**4.** Aggrieved by the order of ld. CIT(A), the assessee has filed the present appeal before this Tribunal.

**4.1** The solitary issue that is raised whether the ld. CIT(A)/NFAC is justified in upholding the order of AO with regard to applicability of the provisions of section 115JB of the Act to the assessee bank?

**5.** Before us, at the outset the ld. A.R. of the assessee submitted that the issue in dispute is squarely covered in assessee's own case in ITA Nos.1032, 1033 & 1040/Bang/2024 vide order dated 28.11.2024 as well as the order passed by this ITAT in the case of M/s. Canara Bank in ITA Nos.937 & 938/Bang/2024 vide order dated 16.10.2024.

**6.** Ld. D.R. on the other hand, supported the order of ld. CIT(A)/NFAC more particularly para 4.1 of the ld. CIT(A)'s order.

**7.** We have heard the rival submissions and perused the materials available on record. The solitary issue that is raised in this appeal is the applicability of the provisions of section 115JB of the Act to the assessee's bank. We agree with the submissions of the ld. A.R. that similar issue came for consideration in the case of M/s. Canara Bank in ITA Nos.937 & 938/Bang/2024 vide order dated 16.10.2024 wherein the Tribunal held as under:

*"8. We have heard both the parties and perused the materials available on record. We are of the opinion that similar issue came for consideration before this*

*Tribunal in assessee's own case in ITA Nos.1219/Bang/2019 & ITA No.186/PAN/2019 dated 8.8.2024, wherein the Tribunal held as under:*

*“9. After hearing both the parties, we are of the opinion that similar issue came for consideration in the case of Canara Bank in ITA Nos.391 & 392/Bang/2023 for the assessment year 2019-20. The Tribunal vide order dated 22.12.2023 held as under:*

*“11. **Ground No.4** raised by assessee is on applicability of provisions of section 115JB of the Act.*

*The Ld.AR submitted that, the assessee does not fall within definition of banking company as defined under Companies Act, 1956 and therefore it is not covered by proviso to section 211(2) of the Companies Act. The Ld. AR thus submitted that provisions of s. 115JB are not applicable to assessee. In support of this submission, he placed reliance on decision of Hon'ble Delhi High Court in the case of CIT v Punjab National Bank Ltd. (successor of erstwhile Oriental Bank of Commerce) in ITA 594/2023 by order dated 20/10/2023, wherein the question of law considered by the court is proposed in question (e) has been dismissed. The said order of Hon'ble Delhi High Court in the case of CIT v Punjab National Bank Ltd. (successor of erstwhile Oriental Bank of Commerce) (supra) is placed at page 35-37 of the PB.*

*The Ld.AR further relied on decision of Hon'ble Delhi Tribunal in the case of Oriental Bank of Commerce v. ACIT reported in [2022] TIOL 331 ITAT-DEL. The Ld.AR submitted that, the provisions of section 115JB, as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to a banking company. He submitted that coordinate Bench of Delhi Tribunal considered this issue by observing as under:-*

*“51. This issue is no longer res-judicata following judgments of the tribunals and the High Courts wherein it is categorically held that MAT provision u/s 115JB will not apply to a Banking Company:*

- Canara Bank vs JCIT, LTU in ITA No. 530/Bng/2010 & other dtd. 30.03.2016 = 2016-TIOL-1120-HC-P&H-IT*
- M/s. Canara Bank vs CIT(LTU) In ITA No. 305/Bang/2011 dtd. 18.06.2012*
- Krung Thai Bank PCI vs Joint Director of Income Tax (ITAT) (Mumbai) in ITA No.3390/Mum/09 dtd. 30.09.2010 reported in (2010) 45 DTR 218*
- Union Bank of India vs ACIT, LTU (ITAT) (Mumbai) in ITA Nos.4702 to 4706/Mum/2010 dtd. 30.06.2011*
- Indian Bank vs Addl. CIT (ITAT) (Chennai) in ITA No.469/Mds/2010 dtd. 03.08.2011*
- Union Bank of India (ITAT Mumbai) in ITA Nos. 4155 to 4161 of 2011 dtd. 27.03.2012*
- Oriental Insurance Co. Ltd. vs. DCIT I ITA No.447/2015 dtd*

30.08.2017 = 2017-TIOL-1714-HC-DEL-IT

- CIT vs Union Bank of India (2019) 308 CTR 797 (Bom) HC

52. In the above referred judgment of the Bombay High Court, at relevant page 8, para no.11 (paper book page no.13) the court has held as under:

"This legal dichotomy emerging from the provisions of subsection (2) of Section 115JB particularly having regard to the first proviso contained therein in case of banking company, would convince us that machinery provision provided in sub-section (2) of section 115JB of the Act, would be rendered wholly unworkable in such a situation. In a well known judgment the Supreme Court in case of Commissioner of Income-Tax, Bangalore vs B.C. Shrinivasa Setty, Vo. 128 ITR 294 = 2002-TIOL-587-SC-IT-LB, had observed that in the Income Tax Act, a charging section and the computing provisions together constitute an integrated code. In a case where the computation provision cannot apply, it would be evident that such a case was not intended to fall within the charging section. It was a case of charging a partnership firm for transfer of a capital asset in the nature of goodwill. The Supreme Court was of the opinion that it would not be possible to envisage a cost of acquisition of goodwill. Since computation of capital gain cannot be done without ascertaining the cost of acquisition, it was held that no capital gain tax can be levied. " 53. Concluded at page 12 para 21 as under:

"27. In the result, we hold that sub-section 115JB as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to a banking company. We answer the question No. 2 in favour of the assessee and against the revenue. In view of this, question of correctness of the order of rectification passed by the Assessing Officer becomes unimportant. Question No. 1 is therefore not answered. All the appeals are dismissed."

54. For the AY 2013-14 and onwards, vide ground no. ground no. 3 of ITA no. 1582/Del/2Q17 (AY 13-14), ITA no. 1583/Del/2017 (AY 14-15) and ground no. 6 of ITA no. 1199/Del/2018 (AY 15-16), the assessee has contended that provisions of section 115JB (MAT) will not apply as the assessee is a Nationalized Bank under the Banking Company (Acquisition and Transfer of Undertaking) Act, 1980.

55. The provisions of section 115JB as amended by the Finance Act, 2012 w.e.f. 1.4.2013, inserting clause (a) and clause (b) in sub-section (2) to section 15JB are as under:

"115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, [2012], is less than [eighteen and one-half per cent] of its book profit, [such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of incometax at the rate of [eighteen and one-half per cent]].

(2) [Every assessee,-

(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956 (1 of 1956); or

(b) being a company, to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 (1 of 1956) is applicable, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of the Act governing such company:]

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 (1 of 1956):

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this

Act,-

(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 correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year. "

56. Thus, the understanding of the above amendment to section 115JB is where a company which are not required u/s 211 (129) of the Companies Act to prepare their P&L account in accordance with Schedule - VI of the Companies Act, 1956 profit & loss account prepared in accordance with the provisions of their Regulatory Acts shall be taken as a basis for computing the book profit u/s 115JB.

57. The assessee's contentions for non-applicability of 115JB provisions are:

"(i) It is a case of Nationalized Bank, under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980.

(ii) Assessee is not a company incorporated under the Companies Act, 1956, nor recognized under section 3 of the Companies Act.

(iii) *The second proviso to sub-section (1) of section 129 (earlier provision 211) of the Companies Act, 2013 is not applicable to the assessee.*

(iv) *Under section 11 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 provides that "for the purposes of the Income-tax Act, 1961, every corresponding new bank shall be deemed to be Indian company and a company in which public is substantially interested".*

(v) *It is settled principle of law where deeming fiction is created by the legislature it has to be confined to the purpose for which it is created. CIT, Panji vs Dempo Company Limited reported in (2016) 74 TAXMAN.com 15 (SC) = 2016-TIOL-164-SC-IT. Therefore, the Income-tax Act must recognize such banking company for the purpose section 115JB in order to make the provisions applicable.*

(vi) *When the charging section and the computing provision together would constitute an integrated code. In case charging section does not apply then the computation section fails. CIT vs B C Shrinivas Setty 128 ITR 294 = 2002-TIOL-587-SC-IT-LB."*

58. *However, the plea of the assessee with respect to nonapplicability of section 115JB to the Banking Companies was rejected by the ITAT Mumbai "B" Bench in ITA No. 1767/Mum/2019 for the A.Y. 2015-16 in the case of Bank of India vs ACIT Mumbai vide order dated 11th December, 2020.*

59. *There is no jurisdictional High Court decision or for that matter any other High Court decision against the assessee. In view of the fact that two use are possible, the view that favour the assessee may kindly be considered, more so in the case of a Nationalized Bank as held by the Hon'ble Supreme Court in the case of CIT vs Vegetable Products Ltd. 88 ITR 192 = 2002TIOL-574-SC-IT-LB."*

12. *The Ld. DR though could not controvert the above observation by Hon'ble Delhi Tribunal in the above own case, placed reliance on the decision of Ld.CIT(A).*

13. *We have perused submissions advanced by both sides in light of record placed before us. We note that decision of Hon'ble Delhi Tribunal in Oriental Bank(supra) has been upheld by Hon'ble Delhi High Court wherein Hon'ble High Court has categorically observed that the revenue in case of Punjab National Bank did not raise this issue which are identical to facts of the present assessee before us.*

***In view of the same, Ground No.4 raised by the assessee deserves to be allowed."***

**9.1** *In view of the above order of the Tribunal cited (supra), taking a consistent view, we allow this ground taken by the assessee."*

**8.1** Further, similar issue came for consideration recently before the ITAT, 'Special Bench' Mumbai in the case of Union Bank of India Vs. DCIT in ITA No. 424/Mum/2020 for the Asst. year 2015-16 and Central Bank of India Vs. ACIT in ITA No. 3740/Mum/2018 for the Asst year 2013-14, in which the Special Bench of ITAT vide Order dated 06/09/2024 held as under:

DECISION

39. We have heard both the parties and also perused the relevant material referred to before us and the various provisions of the relevant Acts cited which are relevant for adjudication of the issue before us.

40. The question which has been referred to the Special Bench is whether the requirement of sub-section (2) of 115JB is fulfilled in the present case of the assessee. Sub-section (1) of Section 115JB mandates charge of income tax based on book profits subject to fulfillment of certain conditions and also provides the rate on which such tax shall be charged. The Section starts with non-obstante clause and therefore, it is a departure from normal charge of tax on the total income of the company. Sub-section (2) is the computation provision dealing with the manner in which such book profits are to be computed. Upto A.Y.2012-13, subsection (2) of Section 115JB applied only to such companies which were required to prepare its profit and loss account in accordance with part II & III of Schedule VI to the Companies Act ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 34 1956. The assessee bank is required to prepare its profit and loss account in accordance with Section 52 r.w.s. 29 of the Banking Regulation Act and not as per the Companies Act. Earlier in the case of the assessee it has been settled by the Hon'ble Jurisdictional High Court that provision of Section 115JB has no application to its case. Now after the amendment w.e.f. A.Y.2013- 14, Sub-section (2) has been amended to bring into the ambit of Section 115JB, those companies to which second proviso to subsection (1) of Section 129 of the Companies Act is applicable, who are required to prepare its statement of profit and loss account in accordance with provisions of the Act governing such company. For the sake of ready reference the amended subsection (2) of Section 115JB is again reproduced hereunder:- (2) Every assessee,— (a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of Schedule III to the Companies Act, 2013 (18 of 2013); or (b) being a company, to which the second proviso to subsection (1) of section 129 of the Companies Act, 2013 (18 of 2013) is applicable, shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of the Act governing such company: Provided that while preparing the annual accounts including statement of profit and loss,— (i) the accounting policies; ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India &



*Central Bank of India 35 (ii) the accounting standards adopted for preparing such accounts including statement of profit and loss; (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 statement of profit and loss and laid before the company at its annual general meeting in accordance with the provisions of section 129 of the Companies Act, 2013 (18 of 2013): Provided further that where the company has adopted or adopts the financial year under the Companies Act, 2013 (18 of 2013), which is different from the previous year under this Act,— (i) the accounting policies; (ii) the accounting standards adopted for preparing such accounts including statement of profit and loss; (iii) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including statement of profit and loss for such financial year or part of such financial year falling within the relevant previous year.*

*41. In so far as Clause (a), the same applies to a case of a company other than referred to in Clause (b). According to clause (a), for the purpose of Section 115JB the company has to prepare its profit and loss account for the relevant previous year in accordance with the Companies Act, 2013 and the First proviso to sub-section (2) requires that while preparing the accounts including the profit and loss account, the accounting policies, the accounting standards and the method and rates adopted for the purpose of preparing such accounts ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 36 including the profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of Section 129 of the Companies Act, 2013. Since assessee bank has to prepare its accounts in accordance with the provisions contained in Section 51 r.w.s. 29 of the BR Act, therefore, Schedule III of the Companies Act is not applicable. Thus, Clause (a) of Section 115JB (2), the computation provision, will not apply and this matter has attained finality in the case of the assessee by the Hon'ble Jurisdictional High Court in the case of the assessee (cited supra).*

*42. Now for Clause (b), following conditions need to be satisfied for applying section 115JB in the case of a company:- i. it applies to a company to which the second proviso to subsection (1) of section 129 of the Companies Act, 2013 is applicable; ii. once this condition is fulfilled, it requires such assessee for the purpose of this section to prepare its profit and loss account in accordance with the provisions of the Act governing such company.*

*43. Since 115JB is applicable to the company to which second proviso to Section 129(1) applies, therefore, it would be relevant to quote Section 129 of the Companies Act which reads as under:- "129. Financial statement-(1) The financial statements shall give a true and*

*fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 37 provided for different class or classes of companies in Schedule III: Provided that the items contained in such financial statements shall be in accordance with the accounting standards. Provided further that nothing contained in this subsection shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose (a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (4 of 1938), or the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), (b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949 (10 of 1949), (c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003 (36 of 2003), (d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law."*

*44. The second proviso applies to any insurance company, banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company. In so far as the present ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 38 case is concerned, one has to consider whether the assessee could be regarded as a 'banking company' for the purposes of section 129 of the Companies Act, 2013).*

*45. Now whether the assessee bank can be termed as a company within the meaning of the Companies Act, 2013, first of all, Section 115JB(2) is applicable to every assessee „being a company". The company has been defined in Section 2(17) of the Income Tax Act which we have already reproduced in para 22 above. Thus, the company means any Indian company. Indian company has been defined in Section 2(26) (incorporated in Para 23 of the order) which defines „Indian company" means company formed and registered under the Companies Act. Thus, the company for the purpose of the Income Tax Act is a company which is formed and registered under the Companies Act. Section 2(9) of the Companies Act, 2013, a banking company has been defined to mean a banking company as defined in section 5(c) of the BR Act). Section 5(c) of the BR Act defines a „banking company" as under: "(c) "banking company" means any company which transacts the*

*business of banking in India" Therefore, for an entity to qualify as a banking company it should first of all, be a company' and secondly the said company should transact the business of banking in India.*

*46. The expression "company" has been defined in section 5(d) of the BR Act as under: ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 39 "(d) "company" means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956); and includes a foreign company within the meaning of section 591 of that Act;"*

*47. Therefore, in so far as is relevant, the entity has to be a company as defined in section 3 of the Companies Act, 1956 (Now 2013) to be regarded as a banking company. Section 3(1)(i) of the Companies Act, defines a 'company' as under: "(i) "company" means a company formed and registered under this Act or an existing company as defined in clause (ii)"*

*48. Therefore, it is sine-qua-non that for an entity to qualify as a company it must either be a company formed and registered under the Companies Act or it should be an existing company as defined in sub-clause (ii) thereof. Since the Assessee is not formed and registered under the Companies Act, 1956, albeit came into existence by a separate Act of Parliament, that is, „Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970“, therefore, it does not fall in the first part of the said section.*

*49. Further, the expression "existing company has been defined in Section 3(1)(ii) to mean as under: "(ii) "existing company" means a company formed and registered under any of the previous companies laws specified below :- (a) any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866), and repealed by that Act; ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 40 (b) the Indian Companies Act, 1866 (10 of 1866); (c) the Indian Companies Act, 1882 (6 of 1882); (d) the Indian Companies Act, 1913 (7 of 1913); (e) the Registration of Transferred Companies Ordinance, 1942 (54 of 1942); and (f) any law corresponding to any of the Acts or the Ordinance aforesaid and in force - (1) in the merged territories or in a Part B States (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (7 of 1913); or (2) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), insofar as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu & Kashmir) Act, 1968 (25 of 1968), insofar as other corporations are concerned; and (3) the Portuguese Commercial Code, insofar as it relates to sociedades anonimas";"*

50. *The assessee bank was neither formed nor registered under the Companies Act, 1956; nor it is in existing company as per the above definition. Once it is not a company under the Companies Act, then the first condition referred to in clause (b) of Section 115JB(2) is not fulfilled, and consequently second proviso below Section 129(1) of the Companies Act is also not applicable.*

51. *The main crux of the department is that since assessee bank has come into existence by the „Acquisition Act“ and Section 11 thereof states that for the purpose of Income Tax Act, ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 41 every corresponding new bank shall be deemed to be an „Indian company“ and the company in which the public are „substantially interested“ and since in Section 2(17) of the Income Tax Act, the „company“ has been defined as any Indian company therefore, the provisions of the Income Tax Act would apply because Section 2(26) of the Act defines „Indian company“ means the company formed and registered under the Companies Act and therefore, it is deemed to be a company under the Companies Act.*

52. *Section 11 of the Acquisition Act states that "For the purposes of Income-tax Act, 1961 (43 of 1961), every corresponding new bank shall be deemed to be an Indian company and a company in which the public are substantially interested". Therefore, the said deeming fiction is created only for the purposes of the Income-tax Act. Further, for the purposes of the said Act, it treats every corresponding new bank to be an Indian company and also a company in which the public are substantially interested.*

53. *First of all, deeming an entity to be an Indian Company or a company in which public are substantially interested for the purposes of the Income-tax Act would not ipso facto make such entity as a 'company' for the purposes of the Companies Act, 2013, unless the conditions specified in Section 3 thereof are fulfilled. There is no provision to deem a nationalised bank to be ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 42 a company for the purposes of Section 3 of the Companies Act, 1956.*

54. *As explained in the foregoing paragraphs, Section 2(17) of the income Tax Act r.w.s. 2(26) which defines „company“ to mean a company formed and registered under the Companies Act, 1956, does not meet the requirement of being a company in the case of assessee bank, because the Indian company has to be formed and registered under the Companies Act. Notwithstanding that Section 11 of the Acquisition Act deems assessee bank to be a company for the purpose of Income Tax Act, but that does not lead to an inference that merely regarded as a company for the purpose of the Income Tax Act it is also Company registered under the Companies Act. The fiction created by Section 11 of the Acquisition Act, does not imply that the assessee bank*

would also become a company for the purpose of the Companies Act for which Clause (b) of Sub-Section 2 of Section 115JB is applicable.

55. In the earlier part of the order, we have already noted that by the Acquisition Act, the banking business of the existing bank was transferred from Union Bank of India Ltd to The Union Bank of India. The earlier entity, i.e., Union Bank of India Ltd. was a company under the earlier Companies Act, however, that company as a whole was not taken over or acquired but only banking business was acquired by the Acquisition Act. That is the reason why Union Bank of India Ltd. still existed at the point of acquisition and continues till now and the shareholders of ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 43 Union Bank of India Ltd. were paid compensation as a consideration for acquiring the banking business. It was by the Acquisition Act that these banks were nationalized and the banking business was acquired from the erstwhile banking companies. These new acquiring banks including Union Bank of India is neither registered under the Companies Act, 2013 nor under any other previous company law. Already the Hon'ble Supreme Court in the case of Rustom Cavasjee Cooper v. Union of India (supra) as noted above, the Hon'ble Supreme Court had held that only undertaking was acquired for the banking companies acquisition and transfer of invoking ordinance which was promulgated on 19/06/1969, which culminated into the Act of Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. Thus, assessee cannot be treated as a company under the Companies Act, because it was never registered under the Companies Act. Ergo, the deeming fiction by way of Section 11 of the Acquisition Act has to be read purely in the context for the purpose of Income Tax Act where the corresponding new bank have been deemed to be an Indian Company and a company in which public are substantially interested. This deeming section cannot be extended to a company registered under the Companies Act to which alone Section 115JB is applicable.

56. Thus, we hold that Section 11 of the Acquisition Act which deals a corresponding new bank treated as Indian company for the purpose of Income Tax, however, Clause (b) in Sub-Section 2 to Section 115JB does not permit treatment of such bank as a company for the purpose of the said clause, because it should be ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 44 company to which second proviso to sub-section (1) to Section 129 of the Companies Act is applicable. The said proviso has no application to the corresponding new bank as it is not a banking company for the purpose of the said provision. The expression "company" used in section 115JB(2)(b) is to be inferred to be company under the Companies Act and not to an entity which is deemed by a fiction to be a company for the purpose of the Income Tax Act. 57. Before us, ld. Counsel has given various references under the Income Tax Act itself where the corresponding new bank and a banking company have been

*treated separate and independent from each other for which our reference was also drawn to Section 36(1)(viii) & 72A. Apart from that, it is noticed that, Section 194A(1) of the Act which provides that if any specified person is responsible for paying to a resident any income by way of interest is obliged to deduct tax at source, however, Section 194A(3) provides that Section 194A(1) shall not apply if the payment has been made to certain entities. Clause (iii) of subsection (3) of section 194A, deals with such entities. The said clause reads as under:-*

*iii) to such income credited or paid to- (a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or (b) any financial corporation established by or under a Central, State or Provincial Act, or ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 45 (c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or (d) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or (e) any company or co-operative society carrying on the business of insurance, or (f) such other institution, association or body [or class of institutions, associations or bodies] which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette: [Provided that no notification under this sub-clause shall be issued on or after the 1st day of April, 2020;]*

57. *The aforesaid clause (f) provides that if Central Government notifies any such entity then TDS is not to be deducted. It is very relevant to note that at the time of Acquisition Act was enacted, Central Government had issued a Notification No. SO 710 dated 16/02/1970 [1970] [Reported in 75 ITR (Stat) 106] which reads as under:-*

58. *Income-tax Act, 1961: Notification under sec. 194A(3)(iii)(f) Notification No. S. O. 710, dated February 16, 1970. (1) In pursuance of sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notify with effect from the 19th July, 1969, the following banks for the purposes of the said sub-clause:-*

- 1. Indian Overseas Bank, 151, Mount Road, Madras*
- 2. Indian Bank, Indian Chamber Building, Madras-1. ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 46*
- 3. Allahabad Bank, 14, India Exchange Place, Calcutta-1.*
- 4. Dena Bank, Devkaran Nanjee Building, 17, Horniman Circle, Fort, Bombay-1.*
- 5. Canara Bank, 112, Jayachamarajendra Road, Bangalore-1.*
- 6. Union Bank of India, 66/80, Apollo Street, Fort, Bombay-1.*
- 7. United Commercial Bank, 10, Brabourne Road, Calcutta-1.*
- 8. Bank of Baroda, 3, Walchand Hirachand Marg, Bombay-1.*

9. *Punjab National Bank, Parliament Street, New Delhi-1.*
10. *Bank of India, 70/80 Mahatma Gandhi Road, Bombay-1.*
11. *Central Bank of India, Mahatma Gandhi Road, Bombay-1.*
12. *United Bank of India, 4, Narendra Chandra Datta Srani (Clive Ghat Street), Calcutta-1.*
13. *Bank of Maharashtra, 1177 Peth, Poona-2.*
14. *Syndicate Bank, Manipal, Mysore State, Mysore*

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 ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 47 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."

**8.2** In view of the above orders of the Tribunal cited (supra), taking a consistent view, we allow this ground taken by the assessee.

**9.** Ground No.5 is the consequential ground with regard to adjustments to book profits and computation of income u/s 115JB of the Act.

**9.1** Since the ground No.4 of the assessee's appeal deciding on the issue of applicability of provisions of section 115JB of the Act is already allowed in favour of the assessee bank by following the earlier order of this Tribunal cited (supra) as well as respectfully following the decision of the ITAT, 'Special Bench' Mumbai, the ground no.5 of the assessee's appeal becomes infructuous."

**7.1** In view of the above order of the Tribunal cited (supra), taking a consistent view, we held that provisions of section 115JB of the Act cannot be applied to assessee bank and consequently the tax on book profits (MAT) are not applicable to assessee's bank.

**7.2** We also make it clear that since the issue of applicability of the provisions of section 115JB of the Act is already allowed in favour of the assessee bank, the ground no. 4 of the assessee's appeal being consequential becomes infructuous.

**8.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 4<sup>th</sup> Apr, 2025

**Sd/-**  
**(Laxmi Prasad Sahu)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 4<sup>th</sup> Apr, 2025.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**