

(2014) 12 MAD CK 0330**Madras High Court****Case No:** Tax Case (Appeal) No. 928 of 2014The Commissioner of Income
Tax

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision: Dec. 1, 2014**Acts Referred:**

- Companies Act, 1956 - Section 211
- Income Tax Act, 1961 - Section 115, 115JB, 115JB(2), 147, 148

Hon'ble Judges: R. Sudhakar, J; R. Karuppiiah, J**Bench:** Division Bench

Judgement

R. Sudhakar, J.

This Tax Case (Appeal) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in entertaining Additional grounds on a issue which was not adjudicated before the CIT(A) especially when Section 253(1) clearly stipulates that appeal may be filed against the order of the lower authorities on those issues which is not the case on hand?

2. Is not the finding of the Tribunal bad by permitting the additional grounds on an issue which was not been dealt by the CIT(A) in his order and therefore it could be at best only be a fresh ground which was not contested at the time of filing of the appeal and therefore not an additional grounds as held by the Tribunal?

3. Whether on the facts and circumstances of the case, the Tribunal was right in holding that provision of Section 115JB would not apply to the assessee bank especially when as per explanation 3 had been inserted in the Finance Act after explanation 2 to Section 115JB(2) wherein it had been clarified that Minimum Alternate Tax is applicable under Section 115JB to bank even if the bank prepare its

profit and loss account as per Banking Regulation Act?

4. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the provision of Section 115JB would not apply to the assessee bank failing to note that as per Explanation 3 it has been clarified that a company to which proviso to sub section (2) of Section 211 of the Companies Act was applicable, has for an assessment year commencing on or before the 1st day of April, 2012 an option to prepare its profit and loss account for the relevant previous either in accordance with provision of Part II and III to Schedule-VI of Companies Act, 1956 or in accordance with the provisions of the Act governing such company and therefore Section 115 JB is applicable?"

2. The assessment year in the case relates to the assessment year 2002-03. The assessee is a Scheduled Bank under the Banking Regulation Act, 1949. For the assessment year 2002-03, the assessee filed return of income declaring total loss of Rs.256,09,26,436/-. The Assessing Officer completed the regular assessment determining book profit at Rs.171,77,15,332/- under Section 115JB and demanded a sum of Rs.18,16,46,321/-. Subsequently, the assessment was reopened under Section 147 of the Income Tax Act by issuing notice under Section 148 to the assessee to charge to tax and interest accrued but not due on securities as also excess relief granted while deducting unabsorbed depreciation. Aggrieved by the order of reassessment, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who held that the reassessment was valid, since there was under assessment of income in the case of the assessee. As against the order of the Commissioner of Income Tax (Appeals), the assessee preferred further appeal before the Income Tax Appellate Tribunal.

3. In the course of hearing before the Tribunal, the assessee had raised additional grounds. After hearing both sides, the Tribunal after following the decision in respect of the assessee's own case for the assessment years 2004-05 to 2006-07 allowed the raising of additional grounds, apart from deciding the issue on merits.

4. The appellant/Revenue has challenged that portion of the order of the Tribunal allowing the raising of additional grounds contending that additional grounds ought not to have been raised before the Tribunal on the plea which was not adjudicated before the CIT (Appeals).

5. Heard learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

6. Rule 11 of the Income Tax Appellate Tribunal Rules provides for raising of additional grounds, which reads as follows:

"Grounds which may be taken in appeal.

11. The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal, but the Tribunal,

in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule:

Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground."

7. The above-said provision makes it clear that the assessee has the right to raise additional grounds and if the same is beneficial to the assessee, the same should be considered by the Tribunal. It is also seen from the order of the Tribunal that the very same issue, raised as additional grounds, has already been considered by the Tribunal in respect of the assessee's own case. Hence, as per the above-said provision, when the additional grounds is beneficial to the assessee, the Tribunal is right in allowing the same.

8. The plea taken by the respondent/assessee is that the provision of Section 115JB of the Income Tax Act will not be applicable to the assessee bank and the said issue has been considered by the Tribunal in the assessee's own case in respect of the assessment year 2000-2001 decided on 3rd April, 2011.

9. In view of the above, question of law Nos. 1 and 2 are answered against the Revenue and in favour of the assessee. The other two substantial questions of law, namely question of law Nos. 3 and 4 are given up in view of the same raised in the connected appeal in T.C.(A)No.929 of 2014. Accordingly, this Tax Case (Appeal) stands dismissed. No costs.