IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2825 OF 2022

IDBI Bank Ltd.
IDBI Tower, World Trade Centre,
7th Floor, Taxation Cell,
Cuffe Parade, Mumbai-400005 … Petitioner

Versus

1. Deputy Commissioner of Income Tax
   Circle-3(4), Mumbai
   Aayakar Bhavan, M.K.Road,
   Mumbai-400020.
2. Additional Commissioner of Income Tax
   Range-3(4), Mumbai.
   Aayakar Bhavan, M.K.Road,
   Mumbai-400020.
3. Principal Commissioner of Income Tax-3
   Aayakar Bhavan, M.K.Road,
   Mumbai-400020.
4. Union of India, through the
   Secretary, Ministry of Finance
   North Block, New Delhi-110001 …Respondents

Mr Satish R Mody a/w Ms Asifa Khan, for the Petitioner.

Mr Akhileshwar Sharma, for the Respondents.

CORAM **M.S. Sonak &**
Jitendra Jain, JJ.
DATED: **24 March 2025**

PC (Per Jitendra Jain, J.):-

1. This petition challenges notice issued under Section 148 of the Income-tax Act, 1961 (hereinafter referred to as

the Act) dated 27 March 2021 and an order rejecting the objections thereto dated 6 December 2021 for the assessment year 2016-17.

2. The Petitioner is a banking company formed and regulated under the Banking Regulation Act, 1949. The Petitioner filed its original return of income on 29 November 2016 declaring total loss of Rs.669.27 Crore. The said return of income was selected for scrutiny assessment and the Petitioner vide various letters dated 30 November 2018, 21 December 2018 and 26 December 2018 filed details and legal submissions with the Assessing Officer. On 29 December 2018, an order under Section 143(3) of the Act was passed assessing income at Rs.6307 crore under the normal provisions of the Act and Rs.103.69 Crore under Section 115JB of the Act.

3. The aforesaid order was challenged before the Commissioner of Income-tax (Appeals) [hereinafter referred to as CIT(A)]. On 2 April 2019, the CIT(A) disposed of an appeal by a detailed order and partly allowed the same in favour of the Petitioner. Since the Petitioner and Respondent were aggrieved by the order passed by the First Appellate Authority, cross appeals were filed in the year 2019 before the Income-tax Appellate Tribunal and these appeals were disposed of by a common order of the Tribunal dated 28 September 2023.

4. Meanwhile, the Petitioner was served with the impugned notice under Section 148 of the Act on 27 March 2021 calling upon the Petitioner to file its return of income since the Respondents had reasons to believe that the income

has escaped assessment. Vide letter dated 17 November 2021, the reasons were furnished to the Petitioner. Briefly, the reasons pertain to calculation of book profit under the Minimum Alternative Tax (MAT) by disallowing Rs.98 Lakhs on account of provisions of wage revision, addition of Rs.867.32 Crores to the book profit on account of interest on non performing investment and disallowance of deduction under Section 36(1)(viia) amounting to Rs.161.01 Crore.

5. On 1 December 2021, the Petitioner filed its detailed objections *interalia* contending that the reasons are based on factually incorrect statements, there is no failure to disclose truly and fully all material facts necessary for the assessment and issues were examined during the original assessment proceedings. However, on 6 December 2021, the Respondents rejected the objections by merely reproducing various case laws and provisions of the Act without controverting what was objected to by the Petitioner.

6. It is on this backdrop that the present petition was filed and the same was admitted by the Co-ordinate Bench of this Court on 13 September 2022 and the proceedings were stayed.

7. Mr. Mody, learned counsel for the Petitioner submitted that this is a case where reopening notice is issued within 4 years from the end of the relevant assessment year. However, the reasons recorded are factually incorrect when compared with the documents on record and therefore the proceedings are initiated without application of mind and therefore are bad in law. He further submitted that on all the

three issues for which the reopening is sought, same were examined during the course of the assessment proceedings and addition/disallowance was made and therefore the present proceedings even if initiated within the period of 4 years from the end of the relevant assessment year is without jurisdiction since the same would amount to review of the order passed based on change of opinion which is not permissible without any fresh tangible material. The Petitioner in support of his submissions has relied upon the following decisions;

i. *CIT Vs Kelvinator of India Ltd.* [1]
ii. *Aroni Commercials Ltd. Vs Dy. CIT* [2]
iii. *German Remedies Ltd. Vs Dy. CIT* [3]
iv. *Asst. CIT Vs Marico Ltd.* [4]
v. *Commissioner of Income Tax Vs Jet Speed Audio P. Ltd.* [5]
vi. *Asian Paints Ltd. Vs Dy. CIT and Anr.* [6]
vii. *Principal Commissioner of Income-tax Vs Century Textiles & Industries Ltd.* [7]

8. Mr. Sharma, learned counsel for the Respondents vehemently defended the impugned proceedings. He submitted that since reopening is initiated within the period of 4 years, the Assessing Officer is justified in issuing the impugned notice. He relied upon the decision of this Court in the case of ***Export Credit Guarantee Corporation of India Ltd Vs. Addl. CIT***[8] and decision of Delhi High Court in the case of

1 (2010) 320 ITR 561 (SC)
2 (2014) 362 ITR 403 (Bom)
3 (2006) 287 ITR 494 (Bom)
4 (2020) 117 taxmann.com 244 (SC)
5 (2015) 372 ITR 762 (Bom)
6 (2009) 308 ITR 195 (Bom)
7 (2018) 99 taxmann.com 206 (SC)
8 (2013) 350 ITR 651 (Bom)

Consolidated Photo and Finvest Ltd. vs Asst. Commissioner Of Income Tax[9]. He, therefore submitted that the petition be dismissed.

9. We have heard learned counsel for the Petitioner and learned counsel for the Respondent and with their assistance have perused the documents which were brought to our attention.

10. Admittedly there is no dispute that the reopening notice is issued within the period of four years from the end of relevant assessment year. The reasons as recorded and furnished to the Petitioner reads as under ;

> *The assessee had filed e-return on 30.09.2016 declaring total income at nil under normal provision and Book Profit of Rs.3401,27,67,375/- U/s 115JB. The case was selected for scrutiny and assessment for A.Y. 2016-17 was completed after scrutiny assessed total income at Rs. Nil after allowing deduction u/s 80IA of Rs. 1131,78,21,731/- under normal Provision of and computed Book Profit of Rs.3612,01,32,060/-U/s 115JB of the Income tax Act.*
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> *2. Subsequently on perusal of the records it was observed that the Provision for wage Revision amounting to Rs.98,00,00,000/- had been discussed (in para 4 of assessment) by stating that the provision for wage arrears for which negotiations are yet to finalised, hence it is contingent liability. It was concluded that the proviso is unascertained liability and was disallowed while assessment under normal provision of the IT Act. As the provision is unascertained liability required to be added back while computing the Book Profit under MAT.*
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> *Further it was noticed that it had been discussed (in para 8 of the assessment order) that the Interest on non performing investment to the extent of Rs.867,32,51,773/- is accrued during the year, and the same was considered as income for the year and added back while assessment as the income was not credited to the profit and loss account. As the said amount was considered as income for the*

9 (2006) 281 ITR 394 (Delhi)

year and not credited to Profit and loss Account, hence said income should have also been considered for Book Profit under MAT. It shows that the statement of profit and loss account was not prepared in accordance with Schedule III to the Companies Act, 2013.

However it was noticed that the above two transactions were not considered while computing the Book Profit under MAT. It is pertinent to mention here that the book profit of assessee had been recomputed and an amount of Rs.345,93,31,753/- was added back and arrived the Book profit of Rs. 19,18,29,750/- in the assessment order. Hence while assessment an amount of Rs. 965,32,51,773/- (Rs.98,00,00,000/- and Rs.867,32,51,773/-) should have been also added back for arriving the correct Book Profit for the purposes of section 115JB. This has resulted in less computation of Book profit of Rs. 965,32,51,773/-as the assessee is liable to pay tax under the normal provision of the IT Act.

2.1 Therefore I am of the view that income to the extent of amount of Rs.965,32,51,773/-, as explained above, has escaped assessment.

2.2 Further, it was observed that the assessee has disclosed in Point No.3 Details of Financial Assets sold to Securitization/ Reconstruction Company for Asset Reconstruction (i.e Schedule 18, Page 203/204 of Financial Assessment), that during the year the bank has sold non-performing assets and there was a shortfall of Rs.322.02 crore in respect of 3 accounts sold to ARCs of which Rs. 161.01 crore have been written off during the year and balance amount Rs.161.01 crore would be written off in Financial year 2017.

It is pertinent to mention here that the banks were allowed provision for NPA as deduction under section 36(1) (viia) of the IT Act, while computing the taxable income in each assessment year. Hence the Shortfall/loss on sale of these assets allowed in the computation resulted in double deduction against the same NPA. Hence the loss claimed by the assessee of Rs. 161.01 crore required to be added back while computing the taxable income. However, it was noticed that this issue was neither discussed in the assessment order nor considered for disallowance while computation. The This resulted in short computation of Business Income to the extent of Rs.161.01 crore.

2.3 Therefore I am of the view that income to the extent of amount of Rs.161,01,00,000/-, as explained above, has escaped assessment.

11. We would first adjudicate upon the issue whether the reasons have been recorded without due application of mind and the effect thereof.

12. The reasons records that the return was filed on 30 September 2016 whereas the assessment order correctly records that return of income was filed on 29 November 2016. The reasons further records that the total income declared under the normal provisions was NIL and book profit was calculated at Rs.3401.27 Crore under Section 115JB of the Act. However, the assessment order records that the Petitioner had declared total loss of Rs.669.27 Crore and book profit was declared at loss of Rs.242.24 Crore. The reasons further records that the Petitioner has been allowed deduction under Section 80IA of Rs.1113.78 Crore when in fact there was no such claim made by the Petitioner in its return of income and allowed in the assessment order.

13. On perusal of the above, there can be no doubt that the reasons have been recorded without any application of mind. What is recorded in Paragraph 1 of the reasons are factually incorrect and on same being pointed out in the objections by the Petitioner, Respondents have not rebutted in the order disposing the objections. The incorrect statements and figures made in Paragraph 1 of the reasons recorded are reiterated in Paragraph 2 of the reasons recorded.

14. In our view, the Respondents have recorded reasons

without looking at the records of the Petitioner and on the same being pointed out by the Petitioner in its objections have not been rebutted. Therefore the reasons recorded are without any application of mind and without perusing the records of the Petitioner and therefore on this short ground itself, the impugned proceedings are required to be quashed and set aside.

15. However, for the sake of completeness, we examine each of the issues on which the reopening is sought to be initiated independently on what we have observed above.

16. With respect to adding back Rs.98 Lakhs on account of provision of wage revision while computing the book profit under Section 115JB of the Act, in the reasons recorded it is stated that this figure was disallowed under normal provisions of the Act in the assessment order on the ground that it is a contingent liability but however same was not added back while computing the book profit. In an appeal proceedings before CIT(A), on remand, the Assessing Officer has admitted that this provision of Rs.98 Lakhs ought not to have been disallowed and accordingly CIT (A) based on this admission of the Assessing Officer in the remand report has given relief to the Petitioner and deleted the addition. This order of the CIT(A) dated 2 April 2019 was available to the Assessing Officer while recording reasons for reopening the case on 27 March 2021. Therefore, on the date of recording the reasons which were based on the findings in the assessment order which findings were reversed by the CIT(A) and on the basis of admission in the remand proceedings by the Assessing

Officer there could not have been any reasons to believe that any income has escaped assessment. The base of reopening falls to ground, therefore on this account, the reopening on the issue of provision for wage revision to be added while computing the book profit is required to be quashed and set aside.

17. With respect to the second issue on adding interest on non-performing investment to the extent of Rs. 867.32 crore is concerned while calculating book profit, the officer in the reasons recorded proceeds on footing that the profit and loss account is not prepared in accordance with Schedule III of the Companies Act, 2013. The Petitioner is banking company and the provisions of Schedule III of the Companies Act is not applicable. As per the second provision to Section 129 of the Companies Act 2013, the banking company is required to prepare its financials as per the Banking Regulation Act and not as per Schedule III of the Companies Act. Secondly, the issue of computation of book profit was examined during the assessment proceedings and the Assessing Officer added various other items and calculated revised book profit. Therefore it cannot be said that the Assessing Officer has not examined the issue of computation of book profit, qua interest on non-performing investment. The Petitioner is justified in relying upon the decision in the case of ***Century Textiles & Industries Ltd. (Supra)*** wherein it is held if certain aspects were examined in the course of the assessment proceedings, then reopening is not permissible on the ground that other aspects were not considered. Therefore, even on this count

there could not have been any reasons to believe that income has escaped assessment.

18. In so far as the last issue is concerned relating to deduction under Section 36(1)(viia), a specific query was raised in the course of the assessment proceedings on this issue and the Petitioner vide letter dated 30 November 2018 filed its detailed submissions in Paragraph 15 and 17 of the said letter. In the assessment order, sum of Rs.5298.41 crore was disallowed under Section 36(1)(vii)/36(1)(viia) of the Act. The said issue was also subject matter of appeal before the CIT(A). Therefore, in our view the issue of deduction under Section 36(1)(vii) and 36(1)(viia) was examined during the course of the original assessment proceedings and therefore any attempt to reopen the case on this issue would result into conferring power of review on the Assessing Officer based on change of opinion which is not permissible under Section 147 of the Act.

19. We now deal with the decision relied upon by Mr. Sharma learned counsel for the Respondent. The decision in the case of ***Export Credit Guarantee Corporation of India Ltd (Supra) and Consolidated Photo and Finvest Ltd. (Supra),*** were based on different facts than that of the present case. In the case of ***Export Credit Guarantee Corporation of India Ltd (Supra) and Consolidated Photo and Finvest Ltd. (Supra),*** there was no query raised by the Assessing Officer during the course of the original assessment proceedings and therefore the courts took the view that the reopening within four years is valid if the Assessing Officer had overlooked the same. In

the instant case, before us the Assessing Officer has examined all the three issues which are subject matter of the impugned proceedings at the time of the original assessment proceedings and same were also subject matter of appeal. Furthermore, the reasons recorded in the present case as observed us above is without looking at the records of the Petitioner and without any application of mind. Therefore, both these decisions cannot come to the rescue of the Respondents and are distinguishable on facts.

20. Mr. Mody, learned counsel for the Petitioner is justified in relying upon the decision which we have quoted above, which have taken consistent view that even if the reassessment proceedings are initiated within a period of four years, if the issues were examined in the course of the assessment proceedings then reassessment proceedings are bad in law.

21. We may also observe that on the reason being furnished, Petitioner vide letter dated 1 December 2021 had raised various factual and legal objections. The Assessing Officer in his order dated 6 December 2021 disposing the objection has not dealt with any of these objections. The order disposing the objection does not give any reasoning for rejection of objection except reproducing the extracts of various case laws. In our view, this was not the correct approach. Therefore, even on this count the objection raised by the Petitioner goes unrebutted.

22. In view of the above, we have no hesitation in holding that the impugned proceedings are required to be

quashed and set aside.

23. The rule is made absolute in terms of prayer clause (a), which reads as follows;

> *(a) Declare that the impugned notice under Section 148 of the Act dated 27 March 2021 (Exhibit F) and the impugned order dated 6 December 2021 (Exhibit K) are wholly without jurisdiction, illegal, arbitrary and liable to be quashed.*

(Jitendra Jain, J) (M.S. Sonak, J)