



## Global Business Tax Alert Sharp Insights

MAT provisions are not applicable to nationalized banks not being a 'company'. Amendment vide Finance Act, 2012 to bring all companies within MAT is applicable only with effect from AY 2013-14.

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The Kolkata Tribunal in the case of UCO Bank vs. Deputy Commissioner of Income-tax [(2015) 64 taxmann.com 51] has held that the provisions of section 115JB of the Income-tax Act, 1961 ('the Act') were not applicable to the assessee since it does not qualify as a 'company' under the Companies Act, 1956 ('Cos Act'). Further, the amendment brought about in section 115JB of the Act vide Finance Act, 2012, to bring all companies (including banking companies) within its ambit with effect from 01 April 2013, is applicable only with effect from Assessment Year ('AY') 2013-14 onwards.

The assessee was a nationalized bank established under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The assessee argued that, as it was not a company under the Cos Act, and it prepared its accounts as per the Banking Regulation Act 1949, section 115JB of the Act for Minimum Alternate Tax ('MAT') was not applicable to it. The tax department contended that section 115JB(2) of the Act refers to Cos Act only for the limited purpose of computation of book profits, and the assessee need not be a company under the Cos Act for the purpose of charging provision. Accordingly, banking companies would also automatically fall under the provisions of section 115JB of the Act.

The Kolkata Tribunal, after referring to section 115JB(2) of the Act, Cos Act and Banking Regulation Act, 1949, ruled that the MAT provisions are not applicable in the case of the assessee on account of the following reasons:

- The assessee was neither a 'company' registered under the Cos Act, nor it is an existing company registered under any of the erstwhile company law. In such circumstances, even though the assessee was assessed in the status of a 'company' for tax purposes, it is not a 'company' under the Cos Act.
- Explanation 3 to section 115JB of the Act has been inserted vide Finance Act 2012 to clarify that only assesseees being 'companies' and to whom provisions of the Cos Act are applicable, came within the ambit of section 115JB of the Act.
- Relying on the Notes to Clauses to the Finance Act, 2012, Explanation 3 to section 115JB of the Act makes it evidently clear that the said section is applicable only to entities registered and recognized as companies under the Cos Act.
- As the intention of the legislature to levy MAT was on companies declaring huge profits and dividends under the Cos Act but paying nil/less taxes under the Act due to various exemptions/deductions etc., the assessee bank should not be subjected to MAT as it was declaring dividends and also paying huge income tax under the Act.

While ruling in favour of the assessee, the Tribunal, *inter-alia*, relied on the following decisions on the issue of applicability of MAT:

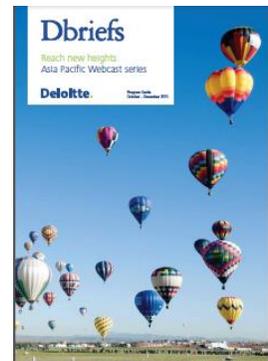
- Kerala State Electricity Board vs. DCIT (Kerala High Court) ;
- Kurung Thai Bank vs. JCIT (Mumbai Tribunal);
- Maharashtra State Electricity Board vs. JCIT (Mumbai Tribunal);
- ICICI Lombard General Insurance Co. Ltd. vs. ACIT (Mumbai Tribunal); and
- Bank of India vs. Addl. CIT (Mumbai Tribunal)

Further, referring to the Notes to Clauses of Finance Act, 2012, the Kolkata Tribunal held that the amendment to bring all companies under MAT is applicable only with effect from AY 2013-14.

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