

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.1436/Bang/2017
Assessment year : 2012-13

The Dy. Commissioner of Income Tax, Circle – 5(2)(1), Bengaluru.	Vs.	M/s. M. Visvesvaraya Co-op Bank Ltd., Shankar Mutt Road Branch, No.109, Shankar Mutt Road, Bengaluru – 560 004. <b>PAN : AAAAS 3586 N</b>
APPELLANT		RESPONDENT

Revenue by	:	Dr. P. V Pradeep Kumar, ACIT
Assessee by	:	None

Date of hearing	:	13.03.2018
Date of Pronouncement	:	23.03.2018

**ORDER**

***Per Sunil Kumar Yadav, Judicial Member***

This appeal is preferred by the Revenue against the order of CIT(A), *interalia*, on the following grounds:

- 1. The order of the Commissioner of Income Tax(Appeals) - 5, Bangalore, is opposed to the law and not on the facts and circumstances of the case.*
- 2. The CIT(A) erred in allowing the amortization of premium by placing the reliance on various decisions without appreciating the fact that the revenue went on further appeal before the Hon'ble High Court of Karnataka in the case of National Cooperative on the same issue for the AY 2009-10.*
- 3. Whether the CIT(A) has erred in not adjudicating the action of the AO, whether CIT(A) right in allowing amortization premium stated "Held to Maturity" mainly relying on the different ITAT Benches.*

4. *The appellant craves leave to add, alter, amend or delete any other grounds on or before hearing of the appeal.*

2. During the course of hearing, the learned counsel for the assessee has contended that CIT(A) has adjudicated the issue following order of the Tribunal in the assessee's own case for the assessment year 2007-08. Therefore, there is no infirmity in the order of the CIT(A). The learned DR on the other hand has submitted that the Revenue has not accepted the order of the Tribunal and has gone in appeal before the Hon'ble High Court of Karnataka on the same issue for assessment year 2009-10.

3. Having carefully examined the order of authorities below in the light of rival submissions, we find that CIT(A) has adjudicated the impugned issue following the order of the Tribunal for the assessment year 2007-08. Nothing has been brought before us as to whether the order of the Tribunal has ever been reversed by the Hon'ble High Court. Mere filing of appeal before the appellate forum does not amount to the stay of the order unless and until the order of the Tribunal is reversed by the Apex Court i.e., either by the High Court or by the Supreme Court, the order of the Tribunal hold the field and subordinate authorities are required to follow the same. In the instant case, CIT(A) has adjudicated the issue following the order of the Tribunal for the assessment year 2007-08 which has not been reversed so far till date. For the sake of reference, we extract the order of the CIT(A) as under:

*"5. I have considered the above grounds of appeal, statement of facts and oral submissions made by the appellant and also gone through the assessment order passed by the Assessing Officer. The AR of the appellant during the appellate Proceedings furnished the copy of the order of Hon'ble ITAT in the appellant's own case for A.Y.2007-08 wherein it was held as under:*

*'08...we have carefully considered the rival submission and perused the relevant facts and materials on record. We have also considered the findings of the various benches of the Tribunal as under:*

*(i) Catholic Syrian Bank Ltd. Vs ACIT-38 SOT 553(Coch): An identical issue to that of the subject matter under consideration had arisen before the Cochin Benc. After analyzing to amortization of premium on purchase of Govt. securities, it was clarified that this was made as per the prudential norms of the RBI. Following the Tribunal decision in the assessee's own case and considering that the assessee bank is*

*following consistent and regular method of accounting system, there is no justification in interfering with order of the CIT(A) on this issue of amortization of premium on government securities. United Commercial Bank Vs. CIT(1999) 156 CTR (SC) 380; (1999) 240 ITR 355 (SC) and South Indian Bank Ltd. (ITA No.126/Coch/2004, dated Sept, 2005 followed."*

*(ii) The Khanapur Co-Op. Bank Ltd. Vs ITO-ITANo.141/PNJ/2011, dated 08/09/2011: The Hon'ble Bench of Panaji Tribunal had recorded its findings that "6. Likewise, the premium amortized at Rs.1,78,098/- is claimed to be in respect of securities held under the category 'held to maturity'. The Assessing Officer has taken them as long term investments. In other words, he has accepted the assessee's claim that the securities are 'held to maturity'. That being so and having regard to the CBOT Instruction No.17 of 2008 dated 26/11/2008 as reproduced herein above, the premium paid on such government securities is required to be amortized over the period remaining to maturity....."*

*(iii) In the case of Corporation Bank Vs ACIT, M'lore in ITA No.112/Bang/2008(Bang), for the assessment year 2004-05, the earlier bench had also held a similar view. In the light of the above discussion and the case laws discussed supra, taking into account the totality of the facts and materials, we are of the considered view that the assessee is entitled to claim this deduction and hence we allow the grounds of the assessee relating to this issue.*

*09...Now turning to the second issue relating to disallowance of the claim of bad debt, the relevant ground read as under:*

*'The learned CIT(A) ought to have appreciated that the provisions for Bad and Doubtful Debts was allowable and ought not to have made any disallowance much less the amount of Rs.5,52,319/-.*

*10... The brief fact of this issue are that the Assessing Officer notices that the assessee claimed excess amount of Rs.6,52,319/- (difference of amount paid as per P&L account of Rs.36,00,000-deduction claimed under provision for Bad and Doubtful debts of Rs.42,52,319/-). Hence, he disallowed Rs.6,52,319/- keeping in view of the decision in the case of State Bank of Patiala Vs CIT(2005) 272 ITR 54 (P&H) Aggrieved the assessee moved the matter in appeal before the first appellate authority.*

*11....After considering the facts of the case and the submissions made before him in the light of the Sec.36(1)(viii) of the Income Tax Act 1961, the first appellate authority was of the view that the deduction allowable u/s. 36(1)(viii) is in respect to provision made. According to him, making of a provision for bad and doubtful debts equal to the amount mentioned in the section is a must for claiming such deduction. He noticed that an amount of Rs.36 lakhs is debited to the P&L account under the head "Provisions for bad and doubtful debts"-and however, the assessee had claimed deduction of Rs.42,52,319/- while computing the taxable income. Thus, he found that in the*

*books of account, provisions were made only for Rs.36 lakhs. Hence, relying on the decision of the P&H High Court cited supra, he was of the view that the Assessing Officer was justified in restricting the provision for bad and doubtful debts to the extent of Rs.36 lakhs and disallowed the balance of Rs.6,52,319/-. Thus, the assessee failed before the first appellate authority. Aggrieved, this issue is brought before us for adjudication with ground extracted elsewhere in this order.*

*12.... The learned counsel for the assessee however, conceded that this issue is against the assessee. The learned DR supported the orders of the authorities below.*

*13.....After considering the facts and materials in the light of the submissions made before us, we do not find any infirmity in the order of the CIT(Appeals) who has elaborately discussed and followed the decision of the Punjab & Haryana High Court in dismissing the claim of the assessee. Thus, this ground of appeal of the assessee is dismissed.*

*Respectfully following the jurisdictional Tribunal's order in the appellant's own case, I hereby allow the appeal."*

4. Since there is no infirmity in the order of the CIT(A), we confirm the same.

5. In the result, appeal of the Revenue stands dismissed.

*Pronounced in the open court on 23<sup>rd</sup> March, 2018.*

Sd/-

**(INTURI RAMA RAO)**  
**Accountant Member**

Sd/-

**(SUNIL KUMAR YADAV)**  
**Judicial Member**

Bangalore.

Dated: 23<sup>rd</sup> March, 2018.

/NS/\*

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|---|----------------------|---|------------|
| 1 | Appellant            | 2 | Respondent |
| 3 | CIT(A)-II Bangalore  | 4 | CIT        |
| 5 | DR, ITAT, Bangalore. | 6 | Guard file |

By order

Sr. Private Secretary,  
ITAT, Bangalore.