

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'A' (SMC)**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.1249/Ahd/2016

निर्धारण वर्ष/Asstt. Year: 2011-2012

AND

आयकर अपील सं./ ITA No.899/Ahd/2017

निर्धारण वर्ष/Asstt. Year: 2012-2013

The Ahmedabad Dist. Co-op. Bank Ltd., Nr. Gandhi Bridge Opp: Income Tax Ashram Road Ahmedabad. PAN : AAAAT 1067 D	Vs.	DCIT, Cir.7/ACIT, Cir.2(2) Ahmedabad.
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<i>अपीलार्थी</i> (Appellant)		<i>प्रत्यर्थी</i> (Respondent)
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Assessee by :	Smt.Arati N. Shah, AR
Revenue by :	Shri S.K. Dev, Sr.DR

सुनवाई की तारीख/Date of Hearing : 27/11/2018

घोषणा की तारीख/Date of Pronouncement: 17 /01/2019

आदेश O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

Present two appeals are directed at the instance of the assessee against orders of the Id.CIT(A)-10, Ahmedabad dated 10.3.2016 and 25.1.2017 passed for the Asstt.Years 2011-12 and 2012-13. Since common issue is involved in both the appeals, therefore we heard them together and deem it appropriate to dispose of them by this common order.

2. A perusal of the ground would indicate that they are verbatim same except variations of figures in both the assessment years. Sole grievance of the assessee is that the Id.CIT(A) has erred in law as well as on facts in confirming disallowance of the claim for deduction of Rs.3,16,00,000/- and Rs.3,03,14,000/- in respect of investment depreciation reserve in the Asstt.Year 2011-12 and 2012-13.

3. Facts on all vital points are common. Therefore, for the facility of reference, we take up the facts mainly from Asstt.Year 2011-12. Brief facts of the case are that the assessee is a cooperative society engaged in the business of banking. It has filed its return of income for the Asstt.year 2011-12 on 29.9.2011 declaring total income at Rs.10,68,73,920/-. Similarly, in the Asstt.Year 2012-13, it has declared taxable income of Rs.12,40,78,520/-. The case of the assessee was selected for scrutiny assessment in both the assessment years. Notice under section 143(2) dated 1.8.2011 and 6.8.2013 were issued and served upon the assessee in both these assessment years. On scrutiny of the accounts, it revealed to the AO that the assessee has debited an amount of Rs.3,16,00,000/- and Rs.3,03,14,000/- as provision in investment depreciation reserve. The Id.AO has confronted the assessee as to how this claim is admissible. According to the AO, it was contended by the assessee that depreciation reserve is required to be created to disclose true and correct value of its investment in the balance sheet. If the investment is less than the cost, the depreciation reserve in respect of such shortfall in the cost is to be reflected by way of crediting the reserve, and therefore, bank has to make a provision for investment depreciation reserve. It has claimed on the basis of guidelines issued by Reserve Bank of India as well as CBDT. The Id.AO was not satisfied with the explanation of the assessee. He rejected the claim of the assessee. Finding recorded by the AO in the Asstt.Year 2011-12 on this issue, reads as under:

"5.3 The contention of the assessee have been carefully gone through. However, the same is not found acceptable. In the Income tax Act, there is no provision for allowing investment depreciation reserve. The depreciation of assets governed by Section 32, in which in respect of block assets, the depreciation is allowed at specified rate of depreciation. The block of assets is defined u/s. 2(11) of the Act in which it is provided as under:

"Block of assets means a group of assets falling within a class of assets comprising

- a) Tangible assets, being buildings, machinery, plant or furniture,*
- b) Intangible assets, being known how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature "*

Investment does not cover under the definition of block of assets and hence the assessee is not entitled to claim depreciation on it. Further, there is no provision in the Income tax Act to allow investment depreciation reserve on account of diminishing the value of investment. Though, the assessee has specifically asked to explain how the same is allowed in the computation of the total income. But the assessee has not explained under which section the same is allowable. Moreover, in the earlier year, though there was investment, the assessee has not created any investment depreciation reserve and claims the same in the profit and loss account. Further, at the time of sale of investment naturally the income may be considered being difference between face value of investment and safe consideration because the investment is not considered as depreciable assets.

5.4 Considering the above facts, it is held that the investment depreciation reserve has been debited only for the purpose to reduce the tax liability which is not permissible as per decision of Hon'ble Supreme Court in the case of McDowell and Co. Ltd. vs. Commercial Tax Officer (SC) 154 ITR 148. Therefore, the investment depreciation reserves amounting to Rs.3,16,00,000/- is disallowed and added to the total income. Since, the assessee has furnished inaccurate particulars of income and thereby concealed the particulars of income, the penalty proceedings u/s. 271(1)(c) is initiated.

4. Appeal to the Id.CIT(A) did not bring any relief to the assessee. The discussion made by the Id.CIT(A) on this issue reads as under:

"8.2 The contentions raised by the appellant have been considered. The appellant's contention that this claim of investment depreciation reserve is as per well accepted accounting standard and method is consistently adopted is not found acceptable for the reason that the bank's book of accounts are regularly audited by competent Chartered Accountant but this is the first year, when such expenditure under the head 'Investment Depreciation Reserve' has been debited to the Profit & Loss Account. If this contention of the appellant is accepted for this year, it would mean that the books of accounts maintained by the appellant in previous years were not written as per accounting standards. The appellant failed to explain why this year, such claim has been made in profit & loss account, The appellant's further argument that it follows the laws laid down by Banking Regulation Act 1949 and guidelines issued by the RBI is also not acceptable as the Bank Regulation Act and the guidelines issued by the RBI governs the banks day to day banking business activities but as far as taxation part is concerned, provisions of Income-tax Act, 1961 are applicable. Further contentions of the appellant that such additions were not made in previous three years is also not acceptable for the simple reasons that every assessment year is separate assessment year and this cannot be reason for not making additions because it was not made in earlier years. Moreover, when such claim was not debited to Profit & Loss account in previous years, question of additions did not arise. Keeping in view the discussion above, the arguments advanced by the appellant against the additions made are not found acceptable, hence these are rejected. The additions made by the AO are, thus, confirmed. This ground of appeal is dismissed."

5. Before us, the Id.counsel for the assessee submitted that this aspect has been considered by the ITAT, Bangalore Bench in the case of ACIT vs. Karnataka Bank Ltd., 63 ITR (Trib) 376 (Bengaluru). She placed on record copy of Tribunal's order. She also contended that CBDT has issued a circular bearing no.17/2008 dated 26.11.2008. This circular provided certain guidelines for granting deduction to the bank while their assessment is being undertaken. For the purpose of present controversy, instructions at serial no.8 are relevant. She took us through these instructions. She further contended that these very instructions were considered by the Hon'ble Gujarat High Court in the

case of CIT Vs. Rajkot District Cooperative Bank and Hon'ble Gujarat High Court has upheld amortization of premium paid by the bank while acquiring securities which was held upto the maturity. This premium was to be spread over. During period of security a proportionate deduction is to be allowed in each year. Though judgment is on a different issue, but it deals with security held by the bank under different category. On the basis of these instructions, deduction *qua* one of the limb of these securities has been allowed. If the instruction is being applied in same spirit, the depreciation on the securities held for trading or available for sale is to be allowed. In other words, judgment of Hon'ble Gujarat High Court ought to be read in a manner that these guidelines governs the assessment of the bank, and if the case of the assessee-bank falls within the ambit of these guidelines, then benefit should be granted. During the course of hearing, we have confronted the Id.counsel for the assessee that if it is construed that if a security is being held as a trading stock, or available for sale, and there is a shortfall in cost vis-à-vis to the market price, on the date of valuation i.e. 31.3.2011 in the Asstt.Year 2011-12, then, the fall in the cost would be admissible as a depreciation. If it is to be accepted, then how it is demonstrated that these securities are held as stock-in-trade. We have also confronted the Id.counsel *qua* an interim-order passed by earlier Bench on 5.4.2018, which reads as under:

“05.04.2018 1. With reference to issue involving claim of ' Investment Depreciation Reserve Rs.3.16 crores as revenue expenditure, the Assessee seeks to submit that the aforesaid amount represents impairment of value of investments which, in essence, falls under category 'Held For Trading' (HFT) in contrast to capital investments under 'Held To Maturity' (HTM). In this regard, it is inter alia observed at the time of hearing that the factual aspects to support the plea of investments claimed to be held as trading assets is not discernible from material placed on record. The Assessee is accordingly required to furnish such evidences as may be

considered expedient including (a) the Board resolution authorising appropriate classification of Investments and treatment in books, (b) disclosure made the financial statement, if any, in this regard and (c) subsequent treatment in Books at the time of actual sale of securities.

2. The matter is adjourned and refixed for hearing on 20/08/2018.

3. Copy of this order-sheet be provided for both sides.”

6. In response to the above query, the Id.counsel for the assessee filed a chart on page no.108 of the paper book. She has compiled with details of nine securities and contended that; for example, security viz. 7.95%/GOI 2032 is concerned, it was acquired on 24.3.2009. Its maturity date is 28.8.2032. Its purchase rate was 102.21 and market rate as on 31.3.2011 was Rs.95.47. Thus, book value was Rs.10,22,10,000/- whereas market value was 9,54,70,000/-. There is a loss of Rs.67,40,000/- in the value of security. This loss has been claimed by the assessee as depreciation. She has explained other securities in a similar manner.

7. The Id.DR on the other hand, contended that this aspect was neither pleaded by the assessee before the AO nor before the Id.CIT(A). This security was purchased in 2009. The statement of investment as on 31.3.2009 is available at page no.137 of the paper book. The assessee has shown face value of this security at Rs.1,000 lakhs; book value at Rs.1022 lakhs and market value at Rs.1014 lakhs. There was a difference of Rs.(-)7.16 lakhs, but it was not claimed as a deduction. Security was categorized under the head investment and not under head stock-in-trade. Had it been shown as stock-in-trade or available for sale, then it could have been shown under the above heads, and this difference in the value could have been claimed by the assessee as deduction in the year ending on 31.3.2009. Thus, what is evidence

available on record demonstrating the fact that when this security was converted in stock-in-trade, and if it was treated as a stock-in-trade, what treatment was given in the accounts ? According to him, there is nothing available to this effect, nor there is a discussion in the assessment order.

8. We have duly considered rival contentions and gone through the record carefully. In the case of Rajkot District Co-op. Bank Ltd., reported in 43 taxmann.com 161, Hon'ble Gujarat High Court has considered the circular issued by the Board and thereafter allowed the assessee to amortize premium paid for acquiring securities in the category held to maturity. This premium was amortized over the period remained upto maturity and proportionately allowed in each assessment year. Thus, in principle Hon'ble Gujarat High Court has held that these instructions are applicable for determining the taxability of an assessee-bank, and if the securities acquired by the bank under the category held to maturity, then premium paid on acquiring such security is to be spread over remaining period upto maturity and would be allowed to the assessee in each year. If we take guidance of this judgment of Hon'ble Gujarat High Court, then, these instructions are required to be applied to the securities held for trading as well as available for sale. Therefore, at this stage, we deem it fit to take note of judgment of Hon'ble Gujarat High Court. It reads as under:

"6. On the other hand, the learned counsel Shri Tushar Hemani for the respondent placed heavy reliance on the said CBDT Circular dated November 26, 2008 and contended that the benefit of amortisation had to be granted. The assessee as a cooperative bank was bound by the RBI directives. As per such directives, the assessee had to invest certain amounts in Government securities and to hold the same till maturity. In the process of acquisition, if there was any premium paid on the face value of the security, the loss had to be amortised. Paragraph (vii) of the CBDT Circular No.17 of 2008 dated November 26, 2008 would apply. Such instruction reads as under:

"(vii) As per RBI guidelines dated 16th October, 2000, the investment portfolio of the banks is required to be classified under three categories viz. Held to Maturity (HTM), Held for Trading (HFT) and Available for Sale (AFS). Investments classified under HTM category need not be marked to market and are carried at acquisition cost unless these are more than the face value, in which case the premium should be amortised over the period remaining to maturity. In the case of HFT and AFT securities forming stock-in-trade of the bank, the depreciation/ appreciation is to be aggregated scrip-wise and only net depreciation, if any, is required to be provided for in the accounts. The latest guidelines of the RBI may be referred to for allowing any such claims."

7. The instructions clearly provide for amortisation of premium paid on acquisition of securities when the same are acquired at the rate higher than the face value. Such amortisation would have to be for the remaining period of maturity. This precisely the Tribunal had directed in the impugned order. Though contended, no contrary instructions of CBDT are brought to our notice. The instruction in question having been issued under section 119(2) of the Income-tax Act, 1961, would bind the Revenue. No question of law, therefore, arises.

9. Question before us, is whether the assessee has produced demonstrative evidence indicating that securities on which depreciation has been claimed were categorized under HFT or AFS. In the year in which securities was acquired, it was shown under the head investment without specifying category. It is quite difficult for us to conclusively to hold that these securities were held in HFT or AFS. Orders of both Revenue authorities are silent on this aspect. We have extracted finding of the AO as well as Id.CIT(A). We have noticed the accounting treatment given by the assessee on page no.137 and 127 of the paper book. Faced with this difficult, we deem it appropriate to set aside this issue to the file of AO for re-adjudication. The Id.AO shall first determine the issue whether these securities are identifiable under category HFT or AFS, and if yes, then according to the judgment of Hon'ble Gujarat High Court, in the case of Rajkot District Cooperative

Bank, depreciation is to be allowed. Otherwise, the Id.AO shall decide the issue in accordance with law.

10. In the result, the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the Court on 17th January, 2019 at Ahmedabad.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER