

आयकर अपीलीय अधिकरण नागपुर न्यायपीठ, नागपुर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL NAGPUR BENCH, NAGPUR

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.91 & 248/NAG/2015
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

The Akola Urban Co-operative Bank Ltd.,
“Jankalyan” 58-59, Toshniwal Layout,
Murtizapur Road, Near Govt. Milk Scheme,
Akola

PAN : AAAAT4082A

.....अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax,
Akola Circle, Akola

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri C.J. Thakar & S.C. Thakar
Revenue by : Shri U.U. Kasar

सुनवाई की तारीख / Date of Hearing : 29-03-2019

घोषणा की तारीख / Date of Pronouncement : 14-05-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These two appeals have been filed by the assessee. ITA No. 91/NAG/2015 is directed against the order of Commissioner of Income Tax

(Appeals)-I, Nagpur dated 31-12-2014 for the assessment year 2010-11. In ITA No. 248/NAG/2015 the assessee has assailed the order of Commissioner of Income Tax (Appeals)-I, Nagpur dated 30-06-2015 for the assessment year 2011-12.

Since, the grounds raised in both the appeals are similar, these appeals are taken up together for adjudication and are disposed of by this common order.

ITA No. 91/NAG/2015 (A.Y. 2010-11)

2. The assessee has raised following grounds of appeal :

- “1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income-tax (Appeals)-I erred in rejecting the appeal of the assessee bank without appreciating the fact that the assessee bank is eligible to claim depreciation on investments in shares in view of various decisions of Hon. Tribunals and CBDT instructions.
2. The learned CIT (Appeals)-I, erred in not allowing Depreciation on investment in shares Rs.1,33,60,000/-, which in view of RBI guidelines and CBDT instructions No.17/2008 dated 26/11/2008.
3. The learned CIT (Appeals)-I erred in not appreciating the fact that as soon as the depreciation on investment is no longer required, has been reversed and offered for taxation.
4. The learned CIT (Appeals)-I, has erred in deciding the appeal without deliberations on the written arguments submitted and treated the investment in shares as investment, while deciding the appeal.
5. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal.”

3. Shri C.J. Thakar and Shri S.C. Thakar appearing on behalf of the assessee submitted that the assessee is a Non Scheduled Co-operative Bank. The assessee has made investment in Government Securities in accordance with the RBI guidelines and has held the same as stock-in-trade. The assessee has claimed depreciation on Government Securities held under HTM category. In scrutiny assessment proceedings, the Assessing Officer disallowed the same and made addition of Rs.1,33,60,000/-.

3.1 Aggrieved against the assessment order dated 21-03-2013, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) rejected the contentions of assessee and upheld the addition made by Assessing Officer.

3.2 The ld. AR submitted that the Commissioner of Income Tax (Appeals) has erred in holding that the investment by the assessee in Government Securities is in fact fixed deposit and diminution in the value of FDRs cannot be taken as business loss. The observations made by the Commissioner of Income Tax (Appeals) are factually incorrect. The ld. AR contended that it is a well settled law that on securities held under HTM category by the banks including Co-operative banks, depreciation is allowable. The ld. AR in support of his contentions placed reliance on the following decisions :

- i. Bank of Maharashtra Vs. DCIT in ITA No. 1370/PUN/2014 decided on 11-03-2019 (Pune-Trib.);
- ii. Pr. CIT Vs. Bank of Maharashtra, 97 Taxmann.com 581 (Bom.);
- iii. CIT Vs. HDFC Bank Ltd. 52 Taxmann.com 333 (Bom.);
- iv. CIT Vs. Bank of Baroda, 129 Taxmann.com 716 (Bom.);
- v. CIT Vs. Nedungadi Bank Ltd., 130 Taxmann.com 93 (Ker.).

4. On the other hand Shri Shri U.U. Kasar representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. It is no more res-integra that the investment made by the Banks including Non Scheduled Co-operative Banks in the Government Securities under the category of Held to Maturity (HTM) are eligible for depreciation. The Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. HDFC Bank Ltd. (supra) has held that loss incurred on account of transfer of securities held under HTM category has to be allowed as business loss. Similar view has been taken by the Hon'ble Bombay High Court in the case of Pr. Commissioner of Income Tax vs. Bank of Maharashtra (supra). The Co-ordinate Bench of Tribunal in the case of Bank of Maharashtra Vs. DCIT (supra) while adjudicating this issue observed as under :

“5.3 Both sides heard on the issue of disallowance of claim of loss in respect of securities held under HTM category. Both sides are unanimous in stating that the present issue was subject matter of appeal before the Tribunal in ITA No. 1505/PN/2008 and in ITA Nos. 1135 to 1138/PN/2013 (supra). The Co-ordinate Bench adjudicated the issue by observing as under :

“20. In the background of the aforesaid legal position, a premise which can be drawn is that for the purposes of valuation of the closing stock it is permissible for the assessee to value it at the cost or market value, whichever is lower. In-fact, the Hon’ble Supreme Court in the case of Chainrup Sampatram vs. CIT, (1953) 24 ITR 481 (SC) held that the assessee is entitled to value the closing stock either at cost price or market value, whichever is lower. In the present case, Revenue does not dispute that the method of the valuation adopted by the assessee, namely, valuing the stock either at cost price or market value whichever is lower, is a generally accepted method of valuation. No doubt, there are no statutory rules for the valuation of closing stock but the ordinarily accepted method of commercial accounting support the valuation of closing stock based on the lower of the cost or market value. Therefore, the departure from the erstwhile method of valuation of closing stock by the assessee is quite appropriate, and in fact is line with a method approved by the Hon’ble Supreme Court in the case of Chainrup Sampatram (supra). In-fact, the only basis for the Revenue to challenge the bona-fides of the change is that the change has been effected only for the purpose of assessment of taxable income and is not incorporated in the account books. The aforesaid plea of the Revenue, in our view, is quite misplaced because it is well understood that assessee is a banking company and is statutorily mandated to maintain its books of account in terms of the RBI guidelines. On the other hand, the assessment of taxable income has to be based on the principle of law and cannot be guided merely by the treatment meted out to a particular transaction in the account books. In-fact, this aspect of the controversy has also been answered by the Hon’ble Karnataka High Court in the case of Corporation Bank Ltd. (supra) by relying on the judgement of the Hon’ble Supreme Court in the case of Kedarnath Jute Mfg. Co. Ltd. vs. CIT, (1971) 82 ITR 363 (SC). Therefore, we do not find any merits in the above objection of the Revenue. Moreover, the plea of the learned CIT-DR that nature of HTM securities is distinct from AFS and HFT securities and thus HTM securities are not stock-in-trade, is quite wrong. It cannot be denied that the securities held by the bank are stock-in-trade. Another plea of the learned CIT-DR was to the effect that the investments in the HTM category are not tradeable and the assessee may not be selling the HTM Securities prior to their maturity. Therefore, as per the learned CIT-DR, such securities could not be considered as ‘stock-in-trade’. The aforesaid plea of the Revenue has been assailed by the learned Counsel for the assessee-bank. He has furnished a statement showing net profit on sale of HTM Securities as per the Balance Sheet for the various assessment years, viz. 2006-07 to 2009-10. On this basis, it is sought to be contended that the HTM category securities are also viewed as ‘stock-in-trade’ by the assessee-bank. In our opinion, the plea of the learned CIT-DR is quite

untenable primarily because the very nature of banking activities allowed as per the Banking Regulation Act, 1949 are in the sphere of business / trade activities; and, accordingly the recognition of investments in HTM category as 'stock-in-trade' is not dependent on the frequency of their sale / purchase carried out by the assessee-bank.

21. In view of the aforesaid discussion, we, therefore, conclude by holding that in the present case the method of valuation of the closing stock adopted by the assessee i.e. cost or market value, whichever is lower is fair and proper and the income-tax authorities have erred in not accepting the same. The orders of the authorities below on this aspect are hereby reversed. “

5.4 The ld. AR has further drawn our attention that the decision of Tribunal has been upheld by the Hon'ble Bombay High Court in Income Tax appeal No. 920 of 2015 (supra). The copy of the Hon'ble High Court order dated 27-02-2018 was furnished before us. A perusal of same shows that one of the question of law before the Hon'ble High Court for consideration was :

“(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition of Rs.359,24,58,508/- in allowing loss of valuation of Held to Maturity (HTM) securities, when HTM securities are capital in nature?”

The aforesaid question was decided by the Hon'ble High Court in favour of the assessee upholding the order of Tribunal. Thus, in view of the fact that the issue has now been settled by the Hon'ble High Court in favour of the assessee, we find merit in ground No. 3 of the appeal by assessee. **Consequently, ground No. 3 raised in the appeal is allowed.”**

6. We observe that the Commissioner of Income Tax (Appeals) while deciding this issue has erred in holding that the investment made by the assessee in Government Securities are in the nature of fixed deposits. This finding of fact returned by First Appellate Authority appears to be factually incorrect. We deem it appropriate to restore this issue back to the file of Commissioner of Income Tax (Appeals) with a direction to decide this issue, in accordance with the order of Tribunal in the case of Bank of Maharashtra Vs. DCIT (supra) after ascertaining the facts correctly. The impugned order

is set aside and the appeal of assessee is allowed for statistical purpose in the terms aforesaid.

ITA No. 248/NAG/2015 (A.Y. 2011-12)

7. The assessee has raised following grounds of appeal :

- “1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income-tax (Appeals)-I erred in rejecting the appeal of the assessee bank without appreciating the fact that the assessee bank is eligible to claim depreciation on investments in shares in view of various decisions of Hon. Tribunals and CBDT instructions.
2. The learned CIT (Appeals)-I, erred in not allowing Depreciation on investment in shares Rs.1,33,60,000/-, which in view of RBI guidelines and CBDT instructions No.17/2008 dated 26/11/2008.
3. The learned CIT (Appeals)-I erred in mentioning the investment in shares as fixed deposit investment.
4. The learned CIT (Appeals)-I erred in not appreciating the fact that as soon as the depreciation on investment is no longer required, has been reversed and offered for taxation.
5. The learned CIT (Appeals)-I, has erred in deciding the appeal without deliberations on the written arguments submitted and treated the investment in shares as investment, while deciding the appeal.
6. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal.”

8. We observe that the grounds raised by the assessee in appeal for assessment year 2011-12 are similar to the one raised in assessment year 2010-11. The findings given by us while adjudicating the appeal of assessee in ITA No. 91/NAG/2015 for assessment year 2010-11 would *mutatis mutandis* apply to the appeal of assessee for assessment year 2011-12.

Accordingly, the appeal of assessee for assessment year 20-11-12 is allowed for statistical purpose in the same terms.

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

Order pronounced on Tuesday, the 14th day of May, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

नागपुर / Nagpur; दिनांक / Dated : 14th May, 2019.

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
 2. प्रत्यर्थी / The Respondent.
 3. आयकर आयुक्त (अपील) / The CIT(A)-I, Nagpur
 4. आयकर आयुक्त / The CIT-I, Nagpur
 5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर / DR, ITAT, Nagpur Bench, Nagpur.
 6. गार्ड फ़ाइल / Guard File.
- //सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, नागपुर / ITAT, Nagpur