

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES 'G', NEW DELHI**

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 4106/Del/2018 : Asstt. Year : 2014-15**

The Sonapat Urban Co-operative Ltd., New Subzi Mandi, Sonapat-131001 (Haryana)	Vs	Asstt. Commissioner of Income-tax, Sonapat Circle, Sonapat (Haryana)
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAAAT0374M</b>		

**Assessee by : Sh. S. Krishnan, Adv.**

**Revenue by : Sh. N. K. Bansal, Sr. DR**

**Date of Hearing: 20.08.2019**

**Date of Pronouncement: 13.09.2019**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Rohtak dated 02.04.2018.

2. Following grounds have been raised by the assessee:

*"1. In invoking the provision of Section 14A of the I.T. Act even though there was no exempt income during the year;*

*2. In invoking the provision of Section 14A of the I.T. Act even though there was never any diversion of interest bearing funds to earn any exempt income;*

*3. in making a disallowance of Rs.17,50,358/- under Rule 8D of the Income Tax Rules, 1962;*

*4. in making a disallowance of Rs.99,68,211/- on account of loss on diminution/depreciation in the value of investments/securities held for trading."*

**Diminution in the value of investments of trading:**

3. Brief facts of the issue are that the Assessing Officer has disallowed the assessee's claim of 'Provision for loss of investments' with the finding that the assessee has not actually sold the investments but valued at market price resulting in estimated loss which is not allowable. The revenue resorted to the addition based on the CBDT Circular No. 17/2008 dated 20.11.2008 (para 11) which instructed that Section 37 of the Act envisages that an amount debited in the P&L a/c in respect of an accrued or ascertained liability only is an admissible deduction while any provision in respect of any unascertained liability or a liability which is not accrued do not qualify for deduction. Thus putting aside the money which may become expenditure on happening of an event would normally not constitute an allowable expenditure. The Id. CIT (A) held that as per Section 37(1) of the Act, the expenditure means expense made out by calculation and intention i.e. paid out or gone away irrevocably from the funds of the assessee company. Revenue relied on the judgments in the case of Calcutta Co. Ltd. Vs CIT 37 ITR 167 (SC) and Southern Technologies Ltd. in Civil Appeal No.1337/2003 (SC). The Id. CIT (A) further held that the assessee's reliance on "The Valuation Standards" of RBI Master circular para 16.1.3 and 16.1.4 as per pages 39 and 40 of his paper book, is misplaced. The investments made by the assessee are not HTM category but AFS and HFT categories i.e., 'Available for sale and held for Trading'. RBI says that as regards valuation of these investments or they are to be 'marked to market' periodically during the year and at the end of the year, but the book value would not undergo any change.

Further, net depreciation for classification in one category should not be reduced from appreciation in similar classification in another category. Appreciation is to be ignored. RBI wants the banks to follow a cautious and conservative approach and not overstate its profits. These securities are 'Available for sale and Held for Trading' and the interest rate keeping changing overtime so the loss or gain is uncertain. However, the total income is to be computed in accordance with the provisions of section 145 of the IT Act. The fact is that actual loss, if any, will come to the assessee at the time of actual sale of securities, not now and this depreciation, if any cannot be factored for computing the total income of the previous year. The profit or loss would be calculated in the year of maturity or redemption.

4. The Id. AR argued based on the guidelines of RBI regarding the valuation of instruments and pleaded that the loss should be allowed based on the order of the revenue for the earlier years too.

5. The Id. DR, Sh. N.K. Bansal heavily argued that the issue of HFT (Held for Trading), AFS (Available for Sale), HTM (Held to Maturity) have to be examined in detail. He argued that the RBI guidelines have been used in a convoluted way by the assessee so as to claim the notional losses.

6. Heard the arguments of both the parties and perused the material available on record.

7. The RBI guidelines for valuation standards are perused which are as under:

*"16.1.1 Investments classified under HTM category need not be marked to market and will be carried at acquisition cost unless it is more than the face value, in which case the premium should be amortized over the period remaining to maturity.*

*16.1.2 The individual scrip in the AFS category will be marked to market at the year-end or at more frequent intervals. The book value of the individual securities would not undergo any change after the revaluation.*

*16.1.3 The individual scrip in the HFT category will be marked to market at monthly or at more frequent intervals. The book value of individual securities in this category would not undergo any change after marking to market.*

*Note: Securities under AFS and HFT categories shall be valued scrip-wise and depreciation/appreciation shall be aggregated for each classification as indicated at paragraph 15.6 above separately for AFS and HFT. Net depreciation, if any, shall be provided for. Net appreciation, if any, should be ignored. Net depreciation required to be provided for in any one classification should not be reduced on account of the appreciation in any other classification. Similarly net depreciation for any classification in one category should not be reduced from appreciation in similar classification in another category.*

*16.1.4 The provisions required to be created on account of depreciation in the AFS and HFT category in any year should be debited to the Profit and Loss Account and an equivalent amount (net of tax benefit, if any, and net of consequent reduction in the transfer to Statutory Reserve) or the balance available in the IFR Investment Depreciation Reserve Account, whichever is less, shall be transferred from the IFR/Investment Depreciation Reserve Account to the Profit and Loss Account. In the event provisions created on account of depreciation in the AFS and HFT category are found to be in excess of the required amount in any year, the excess should be credited to the Profit and Loss Account and an equivalent amount (net of taxes, if any and net of transfer to Statutory*

*Reserves as applicable to Such appropriated to the IFR/Investment Depreciation Reserve Account to be utilized to meet future depreciation requirement for investments in this category. The amounts debited to the Profit and Loss Account for provision and the amount credited to the Profit and Loss Account for reversal of excess provision should be debited and credited respectively under the head 'Expenditure - Provisions & Contingencies'. The banks should segregate quantum of provisions required for diminution/depreciation in investments and park under 'Contingent provisions against depreciation in investment' to clearly define provisions and reserves and facilitate transfer of funds from/to IFR/Investment Depreciation Reserve. The amounts appropriated from the Profit and Loss Account and the amount transferred from the IFR/Investment Depreciation Reserve to the Profit and Loss Account should be shown as 'explanatory note' after determining the profit for the year.*

*16.1.5 It is clarified that while the individual scrips in the HFT category will continue to be marked at monthly or at more frequent intervals, the book value of the individual securities in this category would not undergo any change after marking to market. While the net depreciation in the value of investments, if any, shall be provided for, the net appreciation, any, should be ignored. Net depreciation required to be provided for in any one category should not be netted with net appreciation in any other category.*

*16.1.6 In respect of securities included in any of the three categories where interest/principal is in arrears, the banks should not reckon income on the securities and should also make appropriate provisions for the depreciation in the value of the investment. The....."*

8. Further, the instruction no. 17 of 2008 dated 26.11.2008 of CBDT instructs the field offices that "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 amortized over the period remaining to maturity. In the case of HFT and AFS 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”.

9. From the concurrent reading of the para 16.1.4, 16.1.5, 16.1.6 and the circular of the CBDT it can be said that the HTM category need not be marked to market. And the case of AFS and HFT, the depreciation should be debited to P&L account and an equal amount are the balance available in the Investment Depreciation Reserve Account (IDRA) shall be transferred from IDRA to P&L account. Thus, the losses on account of depreciation are hedged by the IDRA by compensating it to P&L account. It also envisages that it is the individual scrip in HFT and the appreciation and depreciation should be maintained only among one category but not without any category. Even, the CBDT circular also instructs that the aggregation should be scrip wise and only the net depreciation should be provided for in the account. No doubt they form the stock-in-trade of the bank and the depreciation and appreciation has to be considered cumulatively scrip wise. In this background, we find that this exercise has not been carried out or examined by the revenue in detail. Hence, we remand this matter back to the file of the Assessing Officer to examine the losses and gains in AFS

and HFT segments scrip wise and allow the depreciation as mentioned specifically in para 16.1.4. In the result, the appeal of the assessee on this ground is treated as set aside to Assessing Officer for verification.

### **Disallowance u/s 14A**

10. The Assessing Officer held that the assessee has diverted interest bearing fund of Rs.73.19 crores for purchase of shares and mutual funds. The assessee submitted that the investment in shares and mutual funds are only to the tune of Rs.1.60 crores only. However, the Assessing Officer has inserted to disallowance of Rs.17.50 lakhs under Rule 8D of Income Tax Rules, 1962. By now, it has been established by the various judicial pronouncement that no disallowance is warranted in case where no exempt income has been earned by the assessee. Since, the assessee has not earned any exempt income for the year in question, we hold that no disallowance u/s 14A of the Act is called for. As a result, the appeal of the assessee on this ground is allowed.

11. The appeal is treated as partly allowed.  
(Order Pronounced in the Open Court on 13/09/2019).

Sd/-

**(Amit Shukla)**  
**Judicial Member**

**Dated: 13/09/2019**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**