

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI AMARJIT SINGH, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A.No.2573/AHD/2014

निर्धारणवर्ष/Assessment Years: 2011-12

Assistant Commissioner of Income Tax, Circle- 5, Surat.	Vs	The Surat Peoples Co-operative Bank Ltd., Vashudhara Bhavan, Timaliyawad, Nanpura, Surat – 395001. [PAN: AAAAT 2885 P]
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A.No.1726/AHD/2016

निर्धारणवर्ष/Assessment Years: 2012-13

Deputy Commissioner of Income Tax, Circle- 2(2), Surat.	Vs	The Surat Peoples Co-operative Bank Ltd., Vashudhara Bhavan, Timaliyawad, Nanpura, Surat – 395001. [PAN: AAAAT 2885 P]
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे / Assessee by	Shri Kamlesh Bhatt – CA
राजस्वकीओरसे / Revenue by	Shri Mayank Pandey – Sr.DR

सुनवाईकीतारीख/ Date of hearing:	01.10.2019
उद्घोषणाकीतारीख/ Pronouncement on:	03.10.2019

आदेश / O R D E R

PER O.P.MEENA, AM:

1. These two appeals filed by the Revenue are directed against the separate orders of Learned Commissioner of Income Tax(Appeals)-I, Surat dated 26.06.2014 & 15.04.2016 for the assessment years 2011-12 & 2012-13 respectively.

2. Grounds raised by the Revenue in ITA No.2573/Ahd/2014
read as under:

- “1. *On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has erred in deleting the addition of Rs.1,66,57,951/- on account of amortization of premium paid on investment.*
2. *On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has erred in deleting the addition of Rs.3,97,000/- on account of unexplained investment in Multi/National Stock exchange.*
3. *On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has wrongly applied the provisions of Sec.36(1)(vii) of the Act for granting relief for allowability of expenditure claimed on account of amortization.*
4. *On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has wrongly referred the CBDT's Instruction No.17 of 2008 for allowing the expenditure claimed by the assessee on account of amortization.*
5. *On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing appeal of the assessee, when the AIR information in possession of the Department that the assessee had made investment in National/Multi Commodity Exchange.*
6. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld.CIT(A), Surat may be set aside and that of the Assessing Officer's order may be restored.”*

3. Grounds raised by the Revenue in ITA No.1726/Ahd/2016
read as under:

- “1. *On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has erred in deleting the addition of Rs.1,66,57,951/- on account of amortization of premium paid on investment.*
2. *On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has wrongly applied the provisions of Sec.36(1)(vii) of the Act for granting relief for allowability of expenditure claimed on account of amortization.*
3. *On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has wrongly referred the CBDT's Instruction No.17 of 2008 for allowing the expenditure claimed by the assessee on account of amortization.*

4. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld.CIT(A), Surat may be set aside and that of the Assessing Officer's order may be restored."*

I.T.A.No. 2573/AHD/2014/ by the Revenue:

4. Ground No.1 ,3 and 4 states that the CIT (A) has erred in law in deleting addition of Rs.1,66,57,951/- on account of amortisation of premium paid on investment and wrongly applying the provisions of section 36(1)(vii) of the Act and wrongly referred CBDT Instruction No. 17 of 2008 for wrongly expenditure claimed by the assessee.

5. Short facts are that the assessee has purchased certain government securities from the market which has been classified as "held to maturity" (HTM) category and therefore, premium paid over and above the face value of Rs.1,66,57,951 over the remaining period of maturity and same was claimed as deduction. The AO disallowed said claim on the ground that no such provision for amortization or premium paid exist in Income Tax Act,1961, and whenever the assessee sell or encashes the securities, the corresponding profit / loss shall be assessed in the hands of the assessee in the year of sale of maturity. The argument that according RBI Guidelines, it is allowable business expenditure was not found acceptable because there is no

provision in the income tax act for any such deduction of amortisation of the premium paid.

6. Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). The Ld. CIT(A) observed that the allowability of amortisation's expenses on premium government securities has been provided under section 36 (1) (vii) of the Act and explained by the CBDT Instruction No. 17 of 2008 dated 26. 11. 2008. As per this clarification, investment of banks classified under HTM category, need not be marked to market and are carried at acquisition cost, unless there are more than face value, in which case, the payment should be amortised over the period remaining to maturity. On the basis of this instruction, different tribunals, as mentioned by the assessee have allowed the amortised expenditure. The AO has ignored the provisions of instruction which is binding on him while deciding the issue of deduction of the expenditure. Therefore, the expenditure claimed by the assessee was the deleted.

7. Being aggrieved, the Revenue has filed this appeal before the Tribunal.

8. The learned D.R. submitted that the reasons given by the Ld.CIT(A) that amortisation of expenditure is covered by sections

36(1)(vii) of the Act is not correct as there is no provision in the said section. Further, as per CBDT Instruction No.17 of 2008, securities categorised as held to maturity to be amortised over the period remaining to maturity, but there is no mention of its allowability under the Income Tax Act as held in the order. Therefore, the AO was right in disallowing the said expense.

9. *Per contra*, the learned counsel for the assessee referred appeal order of CIT(A) wherein Ld. CIT (A) has allowed the amortization expenses on premium on government securities which has been provided under section 36 (1) (vii) of the Act and these provisions have been explained by the CBDT vide Instruction No. 17 of 2008 dated 26.11.2008. As per this clarification, investment of banks clarified under HTM category need not be marked to market and are carried at cost unless these are more than face value, in which case, the premium should be amortized over the period remaining to maturity. The Tribunal in the case of State Bank of Saurashtra Bhavnagar v. DCIT 93 ITD 662 (Ahmedabad), Catholic Syrian Bank Ltd. v. ACIT [2010] 38 SOT 553 (Cochin) held that in view of Instruction No.17 of 2008 dated 26.11.2008, deduction of amortized expenditure on premium on Government Securities is allowable as expenditure. The learned counsel for the assessee further relied in the case of

ACIT v. Chanasma Nagrik Sahkari Bank Ltd. [2017] 86 taxmann.com 8 (Ahmedabad-Tribunal) wherein it was held that loss on account of premium paid on face value of securities is required to be amortized for remaining period of maturity. The learned counsel for the assessee further relied in the case of CIT-Rajkot-2 v. Rajkot District Co-Operative bank Ltd. [2014] 43 taxmann.com 161 (Gujarat) wherein it was held that in terms of Circular No. 17 dated 26.11.2008, where Co-operative Bank Ltd. purchases certain Government Securities in order to maintain statutory liquidity ratio (SLR) at a price higher than their face value, premium so paid has to be amortized for remaining period of maturity.

10. We have heard the rival submissions and perused the relevant material on record. We find that the issue is duly covered by the decision of Ahmedabad Tribunal in the case of ACIT v. Chanasma Nagrik Sahkari Bank Ltd. [2017] 86 taxmann.com 8 (Ahmedabad-Trib) wherein it was held as under:

“7.1 After considering the above facts, I have carefully considered the reasoning of the AO justifying the disallowance made by him and the submissions made by the appellant in this regard and the facts of the case including the accounting in earlier years. The following material observations are made on the issue:

- (1) As per Section 6 read with Section 5(b) and (c) Banking regulation Act and as per the guideline issued by the Reserve Bank Of India, Investment activities is the normal banking activity and should be treated as banking stock in trade. The*

format of the balance sheet has been prescribed by the legislature and bank has to report their financial result in that format only. As per this format the Investment in Non-SLR Securities though treated as banking assets (stock in trade) has to be shown in the balance sheet as Investment.

- (2) *The above position has also been clarified by **Circular no. 665 of the CBDT dated 05-10-1993.***

"The question whether a particular item of investment in securities constitutes stock-in-trade or a capital asset is a question of fact. In fact, the banks are generally governed by the instructions of the Reserve Bank of India from time to time with regard to the classification of assets and also the accounting standards for investments, The Board has, therefore, decided that the Assessing Officers should determine on the facts and circumstances of each case as to whether any particular security constitutes stock-in-trade or investment taking into account the guidelines issued by the Reserve Bank of India in this regard from time to time."

*CBDT has further issued instruction for the assessment of banks vide its **Instruction No. 17/2008 dated 26.11.2008** (F. No. 228/3/3008 — ITA- III). Point no. VII of the said instruction—*

"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 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,"

In such circumstances, where the same method of accounting is followed and allowed from year to year, such claim has been held to be allowable by the different courts. The Hon'ble Mumbai High court in the case of CIT v. Bank of Baroda (2003) 262 ITR 334 has held that "Depreciation in value of investment held by bank was allowable as deduction, more so when the loss was debited to P&L A/c which was reflected as provision for liability in the balance sheet and the share and securities were valued at cost on the asset side.

Same proposition has been upheld by Kerala High Court in case of CIT v. Nedungadi Bank Ltd. (2003) 130 Taxman 93.

Therefore, even the depreciation in value if had been claimed from year to year, was allowable. Now this allowance of depreciation, which is a provision for loss on the basis of market value; is in effect the application of well known and well accepted principle of valuation of closing stock at 'cost or market price whichever is lower'. This method in fact allows for notional loss. Now, this allowance of depreciation held allowable by the board circular and the different decisions of the High Courts, have been made and

could have been made only on the basis of these securities being treated as stock in trade. The assessee has been following consistent method of in effect claiming no depreciation (writing back any provision of depreciation in P&L account (IDR) for computation of total income) and thus valuing closing stock at cost only for showing the income in its returns. In nut shell, as discussed above, the bank has claimed loss in respect of securities which it had always meant to hold as trading assets and shown as AFS as per RBI's guidelines and classifications. Just because the banks have to keep them for longer times because of the nature of their business, it would not change the nature of the asset. Further, as held by Hon'ble Mumbai High court in the case of GIT v. Bank of Baroda (2003) 262 ITR 334; the mere fact that the banks are required as per RBI's guidelines to show I these in the balance sheet as investment would not affect the nature of the asset. The banks by the very nature of the business may have to park surplus trading funds in securities and although intended to be trading assets may have to keep them for longer periods if funds are not required. The treatment of securities of AFS categories has to be seen in contradiction and contrast with securities of HTM category which are purchased and held for the purpose of Investment only. The circular and instruction of the CBDT being squarely applicable, leaves no doubt on the allowability of the assessee's claim. The ground of appeal is allowed to the extent that the loss is to be taken as business loss.'

6. The Ld. DR relied upon the order of the AO. In furtherance the Ld. DR submitted that when the assessee itself has classified the securities held by it under the head 'investment', the profit/ loss arising on sale of such securities held as investment have been rightly treated to be of capital nature by the AO.

7. The Ld.AR, on the other hand, relied upon the order of the CIT (A). The Ld. AR submitted that the assessee is in peculiar business of banking which is regulated by the RBI. The RBI has prescribed a format whereby the securities held are declared under the head 'investment' and further are classified as 'Held to maturity (HTM)' Held for trading (HFT)' and 'available for sale (AFS)' as per Reserve Bank of India's Instruction. The Ld.AR submitted that RBI mandatorily requires the banks to classify the investment in government securities as noted above. It was submitted that assessee-company being in banking business is required to compulsorily prepare its balance-sheet as per the provisions of Banking Regulation Act. A standard balance-sheet format is thus prescribed wherein there is specific head 'investment' where the aforesaid securities giving rise to the impugned loss were reflected as per norms & procedure. The notified format does not provide for bifurcation between the securities so held towards 'investment' or 'stock in-trade'. It was submitted that owing to litigation of this type, the issue stands clarified by the CBDT Circular No.665 dated 05/10/1993 as referral to by CIT (A). Therefore, in view of the peculiar facts situation, no interference with the order of the CIT (A) is called for.

8. We have considered the rival submissions and perused the orders of the authorities below. It is the case of the assessee that the impugned loss arose on sale of securities and bonds emanated from investments which were sub-classified under 'available for sale' (AFS) category at the time of purchase. In view of the aforesaid facts, we find merit in the claim of the assessee that the loss arising on sale of securities/bonds are of trading

nature notwithstanding the fact that the securities were grouped under the head 'investment' owing to the prescribed format of the RBI. We find that the order of the CIT (A) dealing with the issue is consistent with the CBDT instruction as well as the facts of the case and does not require any elaboration. Accordingly, we decline to interfere with the order of the CIT(A)."

11. We find that the Government securities from the market which has been classified as "held to maturity" (HTM) category and therefore, premium paid over and above the face value of Rs.79,05,467/- over the remaining period of maturity and same is allowable as deduction. 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 amortized over the period remaining to maturity. This was explained by the CBDT vide Instruction No. 17 of 2008 dated 26.11.2008 according which investment of banks clarified under HTM category need not be marked to market and are carried at cost unless these are more than face value, in which case, the premium should be amortized over the period remaining to maturity. The Tribunal in the case of State Bank of Saurashtra Bhavnagar v. DCIT 93 ITD 662 (Ahmedabad), Catholic Syrian Bank Ltd. v. ACIT [2010] 38 SOT 553 (Cochin) held that in view of Instruction dated 26.11.2008, deduction of amortized expenditure on premium on Government Securities is allowable as expenditure. Further, Hon`ble

Jurisdictional High Court in the case of CIT-Rajkot-2 v. Rajkot District Co-Operative bank Ltd. [2014] 43 taxmann.com 161 (Gujarat) wherein it was held that in terms of Circular No. 17 dated 26.11.2008, where Co-operative Bank Ltd. purchases certain Government Securities in order to maintain statutory liquidity ratio (SLR) at a price higher than their face value, premium so paid has to be amortized for remaining period of maturity. In the light of above facts and circumstances, we are of the considered opinion, the amortization expenditure on government securities held as HTM are allowable as deduction. We find that the CIT (A) has rightly allowed this grounds of appeal in favour of the assessee. In view of these facts and circumstances, and following the above decision of Tribunal as well as Hon'ble High Courts, this grounds of appeal of the Revenue is therefore, dismissed.

12. Ground No.2, 5 and 6 relates to deleting addition of Rs.3,97,000/- on account of unexplained investment in Multi/National Stock Exchange.

13. The Assessing Officer noted that as per AIR information, the assessee has made investment in National/Multi Commodity Exchange amounting to Rs.3,97,000/-. However, the same does not find in the balance sheet. It was stated by the assessee that no proof of investment was provided to it in support of such investment made by the assessee. However, the Assessing Officer did not accept the explanation of the assessee and made the

addition of Rs.3,97,000/- as unexplained investment by holding that the said information is AIR information in position of the Department and considered to be genuine one.

14. Being aggrieved, the assessee carried the matter before the Id.CIT(A). The Id.CIT(A) observed that the addition made by the Assessing Officer is not justified as he merely relied on the AIR information in his position regarding transaction of Rs.3,97,000/- nothing else. The appellant has correctly pointed out that unless the complete details such as, nature of transaction, number of transactions, the company in which such investment is made is provided to the assessee it cannot explain the said transaction. In the case of appellant, no details have been provided to it in respect of alleged transactions, therefore the action of the Assessing Officer is not supported by any evidence, hence said addition was deleted.

15. Being aggrieved, the Revenue has filed this appeal before this Tribunal. The Id.Senior Departmental Representative relied on the orders of the Assessing Officer.

16. *Per contra*, the Id.Counsel for the assessee relied on the order of the Id.CIT(A) and submitted that the assessee is being a Co-operative Bank there was no point to make unexplained investment for it nor the Assessing Officer has provided the information and which addition was made, therefore Id.CIT(A) has rightly deleted the said addition.

17. We have heard the rival submissions and find that the addition is made without providing information to the assessee for rebuttal and details of transactions nature and company in which investment is made. Therefore, we do not find any error in the order of Id.CIT(A), accordingly same is upheld. Therefore, these grounds of appeal is therefore dismissed.

18. In the result, appeal of the Revenue is dismissed.

I.T.A.No. 1726/AHD/2016/A.Y. 2012-13 / by the Revenue:

19. Ground No.1 to 4 states that the CIT (A) has erred in law in deleting addition of Rs.1,66,57,951/- on account of amortisation of premium paid on investment and wrongly applying the provisions of section 36(1)(vii) of the Act and wrongly referred CBDT Instruction No. 17 of 2008 for wrongly expenditure claimed by the assessee.

20. We have heard the rival submissions and perused the relevant material on record. Both parties have agreed that the facts are identical as in assessment year 2011-12. Therefore, our findings given in respect of A.Y. 2011-12 in respect of these grounds of appeal would mutatis mutandis apply to these grounds of appeal. Therefore, following same, these grounds of appeal of Revenue is dismissed.

- 21.** In the result, the appeal of the Revenue is dismissed.
- 22.** In the result, both appeals by the Revenue in ITA No.2573/Ahd/2013 and ITA No.1726/Ahd/2016 are dismissed.
- 23.** Order pronounced in open court on 03-10-2019.

Sd/-

(AMARJIT SINGH)

(न्यायिक सदस्यतथा/JUDICIAL MEMBER)

Sd/-

(O.P.MEENA)

(लेखा सदस्यकेसमक्ष /ACCOUNTANT MEMBER)

सुरत/ **Surat**, दिनांक **Dated:** 3rd October, 2019 / S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / **TRUE COPY** / /

Assistant Registrar, Surat