

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

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND  
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA Nos.35 & 36/Bang/2016

Assessment year : 2011-12 & 2012-13

The Asst. Commissioner of Income-tax, Circle-1, Bellary.	Vs.	M/s Pragathi Grameena Bank, Now known as M/s Pragathi Krishna Grameena Bank Head Office, Sangankal Road, Gandhi Nagar, Bellary.  PAN – AAAAP 5593 L
APPELLANT		RESPONDENT

ITA No.2786/Bang/2018

Assessment year : 2013-14

The Dy. Commissioner of Income-tax, Circle-1, Bellary.	Vs.	M/s Pragathi Grameena Bank, Now known as M/s Pragathi Krishna Grameena Bank Head Office, Sangankal Road, Gandhi Nagar, Bellary.  PAN – AAAAP 5593 L
APPELLANT		RESPONDENT

Assessee by	:	Shri Pradeep Kumar, CIT (DR)
Revenue by	:	Smt. Sheetal, Advocate

Date of hearing	:	30.01.2020
Date of Pronouncement	:	05.02.2020

**ORDER**

**Per B.R Baskaran, Accountant Member**

All the appeals filed by the Revenue are directed against the orders passed by the Id CIT(A), Gulbarga and they relate to the asst. years 2011-12, 2012-13 and 2013-14. Since identical issues are urged in these appeals, they were heard together and are being disposed of by this common order or the sake of convenience.

2. The grounds urged by the revenue in all the 3 years relate to the following two issues:-

- a) Disallowance of depreciation claimed in the value of investments.
- b) Disallowance of claim relating to amortization of premium paid on govt. securities.

3. The assessee is cooperative bank and is carrying on banking business.

4. The first issue relates to disallowance of claim of depreciation in the value of investments. The Id AR submitted that this issue has been decided in favour of the assessee in the assessee's own case in asst. year 2007-08 and 2008-09 (ITA Nos.228 and 229/Bang/2012 dated 10/1/2014. She further submitted that the decision rendered in the above said two years was followed by the Tribunal in asst. year 2009-10 and 2010-11 also in ITA Nos.1417 and 1418/Bang/2013.

5. We heard the ld DR on this issue and perused the record. The coordinate bench of the Tribunal has considered this issue in asst. year 2009-10 and 2010-11 in the assessee's own case (referred supra) and decided the same in favour of the assessee, by following the decision rendered by another coordinate bench in asst. year 2007-08 and 2008-09 in the assessee's own case (referred supra) for the sake of convenience we extract below the decision rendered by the coordinate bench in asst. year 2009-10 and 2010-11.

*"3. We have heard the learned Departmental Representatives well as learned Authorised Representative and considered the relevant material on record. At the outset, we note that an identical issue has been considered by this Tribunal in assessee's own case for the Assessment Year 2007-08 and 200809 vide order dt10.1.2014 in [IA Nos.228 & 229/Bang/2012, in para 11 & 12 are as under:*

*"11. We have given a very careful consideration to the rival submissions. The issue with regard to the allowing of deduction on account of diminution in the value of investments held by a bank in the category of HTM was considered by the Hon'ble Karnataka High Court in the case of Karnataka Bank (supra), the Hon'blè High Court made reference to the decisions of the Hon'ble Supreme Court in the case of UCO Bank (237 ITR*

889) and *United Commercial Bank (240 ITR 355)* and came to the conclusion that the method of accounting followed by the assessee has to be judged by the provisions of section 145 of the Act. Thereafter, the Hon'ble High Court referred to the decision of the Hon'ble Supreme Court in the case of *Southern Technologies Ltd. Vs. JCIT (320 ITR 577)* wherein it was held that RBI direction's and guidelines have nothing to do with computation of income and taxability of income under the provisions of the Act. The Hon'ble High Court further distinguished its own decision rendered in the case of *Cit Vs. ING Vysya Bank Ltd. in ITA No.2886/2005 dt.6.6.2012* wherein a view was expressed that securities held by a bank under the category of HTM cannot be treated as stock-in-trade. The Hon'ble High Court thereafter held that the decision in the case of *ING Vysya Bank Ltd. (supra)* runs contrary to the decision of the Hon'ble Supreme Court in the case of *UCO Bank (supra)*. Thereafter, the Court held as follows :-

“8. From the aforesaid judgments of the Apex Court, now it is clear that a method of accounting adopted by the tax payer consistently and regularly cannot be discarded by the Departmental authorities on the view that he should have adopted a different method of

keeping the accounts or on valuation Financial Institutions like Bank, are expected to maintain accounts in terms of the RBI Act and its regulations. The form in which, accounts have to be maintained is prescribed under the aforesaid legislation. Therefore, the account had to be in conformity with the said requirements. RBI Act or Companies Act do not deal with the permissible deductions or exclusion under the IT Act. For the purpose of IT Act, if the assessee has consistently treating the value of investment for more than two decades as investment as stock in trade and claim depreciation, it is not open to the authorities to disallow the said depreciation on the ground that in the balance sheet it is shown as investment in terms of the RBI Regulations. The RBI Regulations, the Companies Act and IT Act Operate altogether in different fields. The question whether the assessee is entitled to particular deduction or not will depend upon the provision of law relating thereto and not the way, in which the entries are made in the books of accounts. It is not decisive or conclusive in the matter. For the purpose of IT Act whichever method is adopted by the assessee, a true picture of the profits and gains i.e. real income is to be disclosed. For determining the real income,

the entries in the balance sheet is required to be maintained in the statutory form may not be decisive or conclusive. It is open to the Income Tax Officer as well as the assessee to point out true and proper income while submitting the income tax returns. 'Even if the assessee under some misrepresentation or mistake fails to make an entry in the books of accounts, although under law, a deduction must be allowed by the Income Tax Officer, the assessee will not lose any right on claiming or will be debarred from being allowed the deduction. Therefore, the approach of the authorities in this regard is contrary to the well settled legal position as declared by the Apex Court,

9. In the instant case, the assessee has maintained the 'accounts in terms of the RBI Regulations and he has shown it as investment. But consistently for more than two decades it has been shown as stock-in-trade and depreciation is claimed and allowed. Therefore, notwithstanding that in the balance sheet, it is shown as investment, for the purpose of Income Tax Act, it is shown as stock in trade. Therefore, the value of the stocks being closely connected with the stock market, at the end of the financial year; while valuing the assets, necessarily the bank has to take into consideration the market

value of the shares. If the market value is less than the cost price, in law, they are entitled to deductions and it cannot be denied by the authorities under the pretext that it is shown as investment in the balance sheet.

10. In that view of the matter, the order passed by the authorities holding that in view of the RBI guidelines, the assessee is stopped from treating the investment 'as stock in trade is not correct. The finding recorded by the authorities is hereby set aside. The appeal is allowed. The matter is remanded back to the Assessing Authority and he shall look into these entries in accordance with law and shall assess in times of the law declared by the Apex Court and the assessee is entitled to the extension of the said benefit. Both the substantial questions of law are answered in favour of the assessee and against the Revenue."

*12. In view of the aforesaid decision of the Hon'ble Karnataka High Court, we are of the view that the CIT (Appeals) was fully justified in allowing the claim of the assessee for deduction. We are also of the view that since the assessee, in the present case, had commenced its operation w.e.f 1.10.2005 and the assessment year 2007-08 is second accounting period, the assessee*

*follows one accounting policy to value the investment at cost and as a stock-in-trade. Therefore, we are of the view that it cannot be argued that the principle of consistency should not be applied in the case of the assessee. The classification and restriction on investments held in HTM category as per RBI Circular will not be relevant when computing total income under the Act. For the reasons given above, we do not find any merit in the grounds raised by the Revenue and consequently, the ground Nos. 1, 3 and 4 raised by the Revenue are dismissed."*

*4. In view of the order, of this Tribunal in assessee's own case (supra), we do not find any error or illegality in the impugned orders of the CIT (Appeals) qua this issue."*

6. We also noticed that identical issue was considered by the jurisdictional Hon'ble Karnataka High Court in the case of CIT Vs. Karnataka Vikas Gramin Bank (ITA No.100014/2014 dated 14/12/2015. For the sake of convenience, we extract below the observations made by the Hon'ble High Court :-

*"20. Re-depreciation claimed on securities "held to maturity".*

*The assessee's claim on depreciation of Rs.17,59,00,087/- and consequential write off in the*

*Books of Accounts was disallowed by the assessing authority on the premise that the securities categorised and accounted as "held to maturity" were indeed investments and could not be considered as stock-in-trade.*

*21. Learned Counsel for the assessee is right in his submission that the issue with regard to the question as to whether an assessee would be entitled to claim depreciation in the given circumstances stands covered by the judgment in the case of United Commercial Bank, wherein the Hon'ble Supreme Court has held as under:-*

*"In our view, as stated above, consistently for 30 years, the assessee was valuing the stock-in-trade at cost for the purpose of statutory balance sheet, and for the income-tax return, valuation was at cost or market value, whichever was lower. That practice was accepted by the Department and there was no justifiable reason for not accepting the same. Preparation of the balance-sheet in accordance with the statutory provision would not disentitle the assessee in submitting the income-tax return on the real taxable income in accordance with the method of accounting adopted by the assessee consistent and regularly. That cannot be dis-carded by the Departmental authorities on the ground that the*

*assessee was maintaining the balance-sheet in the statutory, form on the basis of the cost of the investments. In such cases, there is no question of following two different methods for valuing its stock-in-trade (investments) because the bank was required to prepare the balance-sheet in the prescribed form and it had no option to change it. For the purpose of income-tax as stated earlier, what is to be taxed is the real income which is to be deduced on the basis of the accounting system regularly maintained by the assessee and that was done by the assessee in the present case.*

*In the result, the appeal is allowed. The impugned order passed by the High Court is set aside. The question referred by the Tribunal are answered in favour of the assessee and against the Revenue."*

*22. Admittedly in the instant case, assessee was following the method of accounting namely, "at cost or market, value, whichever is lower". Further, it is not in dispute that this practice was accepted by the Revenue throughout. Thus, in the light of the above pronouncement of the Hon'ble Supreme Court, notwithstanding the preparation of the balance sheet and describing the security under a particular nomenclature in compliance*

*with the directions/ instructions issued by the RBI, the assessee would be lawfully entitled to submit the tax returns on the real taxable income in accordance with the method of accounting consistently and regularly adopted.”*

Since the Ld CIT(A) has followed the binding decision of Hon'ble jurisdictional Karnataka High Court, we do not find any reason to interfere with his order passed on this issue in all the three years.

7. The next issue relates to amortization of premium paid on govt. securities.

8. This issue also been decided in the assessee's own case by the coordinate bench in asst. year 2007-08 and 2008-09 (Supra) which was followed by the coordinate bench in asst. year 2009-10 and 2010-11 (Supra). For the sake of convenience, we extract below the observation made by the coordinate bench in asst. year 2009-10 and 2010-11.

*“6. Ground Nos.1 2 & 3 regarding amortization of premium*

*We have heard the learned Authorized Representative and learned Departmental Representative and considered the relevant material on record. This issue was also considered by this Tribunal in assessee's own case for the Assessment Year 2007-08 and 2008-09 vide order (dt.10.1.2014 (supra) in para Nos. 17&18 are as under :-*

*"17. We have heard the rival submissions. The issue raised by the assessee in ground NO.2 is no longer res integra and has been decided by this Tribunal in the case of M/s Sir M. Visweswaraya Cooperative Bank Ltd, Vs, JCIT ITA No.1122/Bang/2010 A. Y. 07-08 order dated 11.5.2012. The following were the relevant observations of the Tribunal:*

*"03. Let us first take up the issue relating to amortization of premium on investment in government securities. Relevant grounds read as under :*

*"i) The learned Commissioner (Appeals) ought to have appreciated that the appellant has to invest surplus fund in Government securities as per RBI guidelines and the premium paid while investing in Government Securities that are bought in open market would have to be amortized till the maturity date of the security and thus premium was written off was liable to be allowed as depreciation of value of securities;*

*ii) The learned Commissioner (A) ought to have appreciated that the classification of securities for RBI purposes would not take away the benefit which the appellant was entitled to and he ought to have appreciated that the case law referred were distinguishable and accordingly he*

ought to have allowed the deduction as claimed in full."

04. The brief facts pertaining to this issue are that while framing the assessment u/s.143(3) of the IT Act, for the assessment year 2007-08, the Assessing Officer noticed that the assessee has claimed a sum of Rs,26,40,2371/- under amortization of premium of investments and the assessee had no explanation for the claim. Hence, he disallowed the same. While disallowing the same, the Assessing Officer followed the decision of the Madras high Court in the case of TN Power Finance and Infrastructure Development Corporation Ltd., v. JCIT (2006) 280 ITR 491. Aggrieved, the assessee moved the matter in appeal before the first appellate authority.

5. The learned Commissioner of Income-tax (Appeals) after considering the submissions made before him and following the decision of the Madras High Court cited supra, came to the conclusion that the Hon'ble Madras High Court has that merely because the RBI had directed to the assessee to provide for non-performing assets, that direction cannot override the mandatory provisions of the Income-tax Act contained in section 36(1)(viii) which stipulate for deduction not exceeding 5 percent of the total

*income only in respect of the provision for bad and doubtful debts which are predominantly revenue in nature or trade related and not for provision for non-performing assets which are of predominantly capital nature. Thus, he was of the view that the assessee was not entitled to deduction of amortization of premium on investments u/s.36(1)(vii). Aggrieved, the assessee is in second appeal before us with this issue.*

*6. The learned counsel for the assessee submitted that the Commissioner of Income-tax (Appeals) had failed to see the reason that a issue similar to that of the present one had been allowed by various benches of the Hon'ble Tribunals, namely :*

- Catholic Syrian Bank Ltd., v. ACIT - Cochin (2010) 38 SOT'553;*
- Khanapur corp. Bank Ltd., v. ITO in ITA.1411/PNJ/2011 (Panaji);*
- Corporation flank v. ACIT M'lore in ITA.112/Bang/2008 (Bang)*

*The learned counsel also placed reliance on Board instructions No.17 of 2008(vii) and pleaded that the claim of the assessee be allowed as the assessee had the power to debit in its P&L account a sum of Rs. 29.02 lakhs of amortization of premium.*

*07 Per contra, the learned DR was unable to controvert to the submissions of the learned counsel for the assessee.*

*08. We have carefully considered the rival submissions 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., v. ACIT - (2010) 38 SOT'553 Cochin): An identical issue to that of the subject matter under consideration had arisen before the cochin bench. After the analyzing the issue in depth, the bench has observed that with regard to amortization of premium on purchase of Government 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 the order of the Commissioner of Income-tax (Appeals) on this issue of amortization of premium on government securities. United commercial Bank v. 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 - ITA No. 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 CBDT 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 v. ACIT M'lore in ITA.11218/Bang/2008 (Bang), for the assessment year 2004-05, the earlier bench had also held 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."*

*18. We are of the view that in the light of the decision on the issue considered by the Tribunal, the claim made by the assessee has been rightly allowed by CIT (Appeals). Ground No.2 is accordingly dismissed"*

*Accordingly, by following the earlier order by this Tribunal in assessee's own case, we decide this issue in favour of the assessee.*

9. We notice that this issue has also been decided in favour of the assessee in the earlier years by the coordinate benches. Following the same, we uphold the orders passed by 1d CIT(A) in all the 3 years on the above said issue also.

10. In the result, all the appeals filed by the Revenue is dismissed.

Order pronounced in the open court on **5<sup>th</sup> February, 2020.**

**Sd/-**  
**(N.V Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 5<sup>th</sup> **February**, 2019.  
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation .....
2. Date on which the typed draft is placed before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S .....
4. Date on which the fair order is placed before the dictating Member .....
5. Date on which the fair order comes back to the Sr. P.S. ....
6. Date of uploading the order on website.....
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