

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND  
SHRI LALIET KUMAR, JM

आयकर अपील सं. / ITA No.1761/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2011-12

ACIT, Circle-6,  
Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Janata Sahakari Bank Ltd.,  
1444, Bajirao Road, Shukrawar Peth,  
Pune-411002.

PAN : AAAJJ0073G

.....प्रत्यर्थी / Respondent

Revenue by : Shri Deepak Garg  
Assessee by : Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing : 07.02.2020

घोषणा की तारीख / Date of Pronouncement : 11.02.2020

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the Revenue is against the order of the CIT(A)-2,  
Pune dated 23.11.2016 for the assessment year 2011-12.

2. The grounds raised by the assessee are as under :-

- “1. On the fact and the circumstances of the case and in the law, the CIT (A) has erred in deleting the disallowance of Rs. 6,00,64,835/- being depreciation in respect of HTM securities which are capital in nature?
2. On the fact and the circumstances of the case and in the law, the CIT (A) has erred in deleting addition of Rs. 73,55,848/- on account of profit on sale of investments.
3. For this and such other reasons as may be urged at the time of hearing, the order of the CIT(A) may be vacated and that of the Assessing Officer be restored.

4. *The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal."*

3. Before us, at the outset, Id. Counsel for the assessee brought our attention to the above extracted grounds and submitted that the same stands covered in favour of the assessee by virtue of the order of the Tribunal in assessee's own case for the assessment years 2005-06 to 2010-11 vide ITA No.21/PUN/2014 and others dated 25.02.2015 read with the judgement of the Jurisdictional High Court in assessee's own case vide Income Tax Appeal No.817 of 2016 and others dated 10.12.2018. Giving the background facts of the case, Id. Counsel for the assessee submitted that this is a case where the Assessing Officer held HTM securities. Disallowing the claim of the assessee, Assessing Officer made addition of Rs.6,00,64,835/- as per the discussion given in para 3 to 3.5 of the assessment order. The CIT(A) on perusal of the assessment records noted that certain issues were not considered by the Assessing Officer in the original assessment proceedings. As per the CIT(A), the said loss was wrongly allowed as business loss as HTM securities were in the nature of capital assets and loss incurred on sale of those securities was a capital loss. The assessee had valued the investment at the market rate prevailing on the date of shifting which had resulted in the loss, which was debited to Profit & Loss Account. The Assessing Officer noted that as per RBI guidelines, the banks were allowed to shift securities from one category to the others and on such shifting, if it results in any depreciation in value of investments, the same can be claimed as deduction in the Profit & Loss Account. However, under the Income-tax Act, loss arising on such shifting of

securities from AFS to HTM securities, was not an allowable deduction. The CIT(A) denied the same and held that the assessee bank can value the same at cost/market price whichever is less therefore I hold that Profit or Loss on sale of security for the purpose of tax should also be allowed and profit/loss in respect of the same security should be deducted/added while computing the income. The CIT(A) allowed the said issue in favour of the assessee.

4. Further, on account of profits or investments, the Assessing Officer made addition of Rs.73,55,848/- (para 4 of the assessment order). The CIT(A) following the said order of the Tribunal in assessee's own case (supra) granted the relief to the assessee. The contents of para 4.2.1 to 5.2 of the order of the CIT(A) are relevant in this regard.

5. Aggrieved with the above decision of the CIT(A), the Revenue is in appeal before us with the grounds extracted above.

6. Before us, at the outset, ld. Counsel for the assessee filed a copy of the order of the Tribunal in assessee's own case (supra) as well as the judgement of the Hon'ble Bombay High Court in assessee's own case (supra) where the Hon'ble High Court affirmed the said decision of the Tribunal (supra). The ld. Counsel submitted that the assessee claimed loss of violation of HTM securities (securities are capital in nature) as an allowable loss. The Hon'ble Bombay High Court in assessee's own case (supra) granted relief to the assessee affirming the order of the Tribunal and relying on the judgment in the case of CIT vs. Thane Bharat Sahakari Bank Ltd. (Income Tax Appeal No.1117 of 2013) rendered on 17<sup>th</sup> March, 2015. The relevant questions and

answers mentioned in the said judgement of the Hon'ble High Court (supra) are extracted hereunder :-

"2. The Revenue urges the following reframed common Priya Soparkar 2 35 itxa 817-16, 819-16, 832-16 and 837-16-0 question of law before us as under:

*"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was justified in deleting the addition for relevant assessment year in allowing loss of valuation of Held to Maturity (HTM) securities, when HTM securities are capital in nature?"*

3. Mr.Tejeev Singh, learned counsel appearing in support of the appeal very fairly states this issue now stand concluded against the Revenue and in favour of assessee. This by the decision of this Court in CIT Vs. Thane Bharat Sahakari Bank Limited (Income Tax Appeal No.1117 of 2013) rendered on 17th March, 2015.

4. In the above view, the proposed question in all the appeals do not give rise to any substantial question of law. Thus, not entertained."

7. We heard both the sides. We perused the contents of para 4.2.1 to 5.2 of the order of the CIT(A) and find it relevant to extract same. The same are extracted hereunder :-

"4.2.1 Respectfully following the decision of Hon'ble Pune Bench of ITAT in the appellant's own case, the Assessing Officer is directed to allow the claim arising on account of depreciation on valuation of HTM securities. However, in the light of direction given by the Hon'ble Bench the Assessing Officer is directed to consider reworking the income in line with observation of the Tribunal in the case of ACIT vs. Bank of Maharashtra in ITA Nos. 1505, 1618/Pn/2008 as has been directed in the appellant's own case in A.Y. 2007-08 & 2009-10 in ITA No. 522 & 523/PN/2013. Needless to mention that reasonable opportunity shall be granted to the appellant. The grounds of appeal raised by the appellant are treated as allowed for statistical purposes.

5. In ground No. 2, the appellant is aggrieved against the addition of Rs. 73,55,848/- on account of profit on sale of securities. The Assessing Officer during the assessment proceeding noticed that the assessee had credited an amount of Rs. 1,88,60,112/- on account of profit on sale of securities. However, in the computation of income the assessee deducted the same and added back an amount of Rs. 1,15,04,264/- which was calculated on cost or market price whichever is lower. The Assessing Officer after considering the submission filed on behalf of the appellant held as under in the assessment order:

.....

*5.2 I have considered the facts of the case and I am in concurrence with the arguments taken on behalf of the appellant. The bank value its securities in the books of account as per the guidelines issued by the RBI. Accordingly the profit/loss on sale of securities is calculated in the books by comparing the book value of each security and its selling price. The said profit/loss is debited or credited as the case may be to the P & L account. However for the purpose of income tax, all the securities are treated as stock-in-trade. Since while dealing with ground No.1 relating to HTM Category of Govt. Securities, it has been held that the appellant bank can value the same at cost/market price whichever is less therefore I hold that Profit or Loss on sale of security for the purpose of Income Tax should also be allowed and profit/loss in respect of the same security should be deducted/added while computing the income. With these observations, the ground No.2 is treated as allowed.”*

8. Considering the above settled nature of the issue at the level of the Tribunal as affirmed by the Hon'ble High Court (supra), we are of the opinion that the decision of the CIT(A) is fair and reasonable on this issue and it does not call for any interference. Accordingly, the ground no.1 raised by the Revenue is dismissed.

9. Regarding the ground no.2 raised by the Revenue relates to the relief of Rs.73,55,848/-, ld. Counsel for the assessee fairly submitted that the said issue now stands covered by the said judgement of the Hon'ble High Court in assessee's own case (supra) and, therefore, for the computation of correct figures, the matter may be remanded to the file of the Assessing Officer. In fact, similar direction was given by the CIT(A) which is evident from the contents of para 5 of the order of the CIT(A). Considering the same, we are of the view that the decision given by the CIT(A) in the said para 5 is in tune with the said judgment of the Hon'ble High Court in assessee's own case (supra) for computation of the correct figures. Thus, on this issue also, the order of the CIT(A) is fair and reasonable and it does not call for any

interference. Accordingly, the ground no.2 raised by the Revenue is dismissed.

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

Order pronounced on this 11<sup>th</sup> day of February, 2020.

**Sd/-**

**(LALIET KUMAR)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

**(D. KARUNAKARA RAO)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 11<sup>th</sup> February, 2020.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.