

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B”BENCH: BANGALORE**

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

ITA No.1157/Bang/2017
AssessmentYear: 2012 – 13

The Karnataka State Co-operative Apex Bank Limited No.1, Uthunga Pampa Mahakavi Road Chamarajpet, Bangalore-560018 PAN NO :AABAT0269J	Vs.	The ACIT, Circ-5(2)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri. L. Bharat, A.R.
Respondent by	:	Shri Muzaffar Hussain, CIT – DR

Date of Hearing	:	19.02.2020
Date of Pronouncement	:	06.03.2020

ORDER

PERB.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 23-02-2017 passed by Ld CIT(A)-5, Bangalore and it relates to the assessment year 2012-13. The solitary issue urged in this appeal is whether the Ld CIT(A) was justified in confirming the action of the AO in treating the loss of Rs.12.91 crores arising on sale of

securities as “Capital loss” rejecting the claim of business loss made by the assessee.

2. The facts relating to the above said issue are discussed in brief. The assessee is doing banking business. During the year under consideration, the assessee has sold securities/bonds held by it in Power Finance Corporation and Indian Railway Finance Corporation. The same has resulted into a loss of Rs.12.91 crores and the assessee claimed the same as business loss. The AO noticed that the assessee has invested in the above said securities/bonds as its non-SLR investments. From the explanations furnished by the assessee, the AO noticed that the assessee had made investments non-SLR investments in excess of the limits prescribed by the RBI in its master circular No.RPCD.CO.RF.BC.26/07.02.03/2005-06. The same was pointed out by the RBI in its letter dated 05-12-2011. Accordingly, the assessee has sold the excess investments and the same has resulted into loss.

3. The assessee submitted before the AO that all investments made by banking companies are ‘stock in trade’ in its hands and accordingly claimed that the above said loss is business loss. However, the A.O. took the view that the above said investments have been made by the assessee over and above the limits prescribed by the RBI and hence these investments should be considered as having been made on assessee’s own volition and not as part of business. Accordingly, he treated the above said

bonds/securities as investment and accordingly computed capital gain on their sale. The Ld. CIT(A) confirmed the view taken by the A.O. and hence the assessee is in appeal before us.

4. The Ld. A.R. submitted that all the investments made by a banking company is considered as stock in trade as per the decision rendered by Hon'ble Supreme Court in the case of United Commercial Bank Vs. CIT 240 ITR 355. He submitted that the assessee has made investments in the above said bonds/securities as part of its business activities and since the holding of various types of securities was considered by RBI as excessive, the assessee has sold the same during the year under consideration. He submitted that RBI circular/instructions cannot overwrite the income tax provisions. He further submitted that the assessee has been treating these bonds/securities as stock in trade only in the earlier years.

5. When a specific question was asked as to whether the impugned bonds/securities have been revalued in the past as at the year end to match with market price and whether the loss, if any, arising on such revaluation was allowed as deduction in the earlier years, the Ld. A.R. submitted that the assessee has revalued these securities in the past and claimed the loss on such revaluation as deduction. In support of the same, the assessee furnished a letter along with supporting document to substantiate his contentions.

6. The Ld. D.R. on the contrary, supported the order passed by Ld. CIT(A).

7. We heard the parties and perused the record. According to the assessee, as per the decision rendered by Hon'ble Supreme Court in the case of United Commercial Bank, banking business shall include making investments also and hence the impugned investments are stock in trade only. It was also submitted that the assessee has revalued these securities as at the year end on marked to market basis. The said action of the assessee, further reinforces its contentions that the impugned securities were held as stock in trade only. We notice that both the tax authorities have taken the view that the investment made by the assessee over and above the limits prescribed by RBI for non-SLR investments should be considered as "Investments" only and not stock in trade. However, it is pertinent to note that the tax authorities have not brought any judgment or material in support of their view.

8. There should not be any dispute that if the assessee has revalued these securities as at the year end on marked to market basis, then it will show that these securities have been held as stock in trade only by the assessee. This exercise is without prejudice the assessee's reliance on the decision rendered by Hon'ble Supreme Court in the case of United Commercial Bank (supra). Before us, the Ld. A.R. has furnished certain details to substantiate its contentions that these securities have been revalued as at the year end. Since these are all new facts, which

would support the contentions of the assessee and since these facts have not been verified by the A.O., we are of the view that this issue requires fresh examination at the end of the A.O. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of the A.O. for examining afresh by considering the evidences that were filed by the assessee before us and various decisions that may be relied upon by the assessee.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 06.03.2020

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

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

Bangalore,
Dated 6th March, 2020.
/VG/

Copy to:

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

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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
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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.
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6. Date of uploading the order on
website.....
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8. Date on which the file goes to the Bench Clerk
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11. The date on which the file goes to the Assistant Registrar for
signature on the order
12. The date on which the file goes to dispatch section for
dispatch of the Tribunal Order
13. Date of Despatch of Order.
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14. Dictation note enclosed.....