

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'B' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)]
and Amarjit Singh (Judicial Member)]**

ITA Nos. 5680 & 5681/Mum/2019
Assessment Years: 1995-96 & 1999-2000

**Deputy Commissioner of Income Tax,
Circle 2(3)(2), Mumbai**

..... Appellant

Vs.

M/s. Bank of Madura Ltd.
*M/s. ICICI Bank Ltd, Taxation Department,
ICICI Bank Towers, North-West Wing,
Ground Floor, Bandra Kurla Complex,
Bandra (E), Mumbai 400051
[PAN: AAAC11195H]*

.....Respondent

Appearances:

Tharian Oommen *for the appellant*
Ms Arati Vissanji *for the respondent*

Date of concluding the hearing: : March 17, 2021
Date of pronouncement : March 17, 2021

O R D E R

Per Pramod Kumar, VP:

By way of these appeals, the Assessing Officer has challenged correctness of the order dated 06th June 2019, passed by the learned CIT(A)-4, Mumbai for the assessment years 1995-96 and 1999-2000.

2. Grievances raised by the Assessing Officer are as follows:

1. "Whether on the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of broken period interest on purchase of securities by holding this expenditure deductible as business expenditure ignoring the judgment in the case of Commissioner of Income Tax Vs Bank of Rajasthan Ltd. (2009) 316 ITR 391, which decided the issue in favour of the Revenue.?" [Tax Effect :Rs. 1,76,98,2 53]

2. *"Whether on the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in treating the Govt Securities held by the bank as Stock in Trade and allowing the depreciation in the case of such securities despite the fact that the said securities were classified under the head "investment" by the assessee itself in its accounts?" [Tax Effect: Rs. 1,04,59,646]*

3. The issues raised in this appeal are admittedly covered by the decision of coordinate bench dated 09th December 2019, in assessee's own cases in ITA No. 677 & 678/Mum/2014 for the assessment years 2000-01 and 2001-02. Learned representatives fairly accept that position. We see no reasons to take any view of the matter than the view taken by the coordinate bench in the aforesaid decision wherein the coordinate bench has *inter alia* observed as follows:-

2. *The issue raised in ground No.1 is general in nature and does not require any adjudication.*

3. *The issue raised in ground No.2 is against the order of Ld. CIT(A) treating the broken period interest, paid at the time of purchase of securities as revenue expenditure by holding that securities held by bank as stock in trade and not as investments and thereby not treating the interest as part of the cost of the securities.*

4. *The facts in brief are that the assessee treated the broken period interest paid at the time of purchase of securities as revenue expenditure by treating the security held by the bank as stock in trade whereas according to the AO the securities were classified by the assessee bank as investments and therefore interest on such investments amounting to Rs.13,49,40,464/- has to be treated as capital in nature and added to the cost of investments. Accordingly, the AO added the same to the income of the assessee.*

5. *In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by following the decision of Hon'ble Madras High Court in the case of CIT vs. Karur Vaisya Bank Ltd. (2010) 33 DTR Madras 244.*

6. *At the outset, the Ld. Counsel of the assessee submitted that the issue involved of broken period interest has been adjudicated by the co-ordinate bench of the Tribunal in assessee's own case in its favour and therefore by following the said decision of the co-ordinate bench of the Tribunal, the appeal of the Revenue may kindly be dismissed on this ground.*

7. *The Ld. D.R., on the other hand, relied on the order of AO.*

8. *After hearing both the parties and perusing the material on record including the decision cited in ITA No.676/Chennai/2014 A.Y. 1996-97, we observe that the identical issue was decided in assessee's own case in its favour by the co-ordinate bench of the Tribunal. The operative part is reproduced below:*

“19. We have considered rival submissions and perused materials on record. We have also applied our mind to the decisions relied upon. As mandated by the Reserve Bank of India, every bank has to maintain statutory liquidity ratio (SLR). For that purpose Bank invests in Government securities. Therefore, depending upon the requirement a Bank purchases and sales Government security. Generally, interest on Government security is payable in half years. When Government securities are traded, the purchaser has to pay to the seller not only the purchase price of the securities but also the interest accrued thereon from the last due date of the interest till the date of purchase of the securities. This interest from the last due date till the date of purchase is referred to as broken period interest. While the purchaser of the securities pays the broken period interest, the seller receives it. Undisputedly, in the impugned assessment year the assessee has paid broken period interest on purchase of Government securities. The Assessing Officer has disallowed assessee's claim of deduction only on the ground that such Government securities have been shown by the assessee under the head "Investment". In our view, the aforesaid, decision of the Assessing Officer is unacceptable. The assessee being a Banking Company is regulated by the provisions of the Banking Regulation Act, 1949, and RBI circulars issued from time to time. Thus, as per the provisions of Banking Regulation Act, 1949 read with Circulars issued by the RBI, though, the securities are held by the Banks as stock-in-trade, however, as per the prescribed norms of Banking Regulation Act, 1949 and RBI guidelines, the assessee has to prepare Balance Sheet and Profit & Loss account in a particular format as per which the securities held as stock-in-trade are to be shown as investment. Though, the Assessing Officer has not disputed the aforesaid factual position, however, he has held that the Income Tax Act, 1961 will get precedence over the Banking Regulation Act, 1949. Thus, from the aforesaid facts it is clear, though, the assessee has held the securities as stock-in-trade, however, complying to the provisions of Banking Regulation Act, 1949, it has shown them as investment. But, for that reason itself, the nature and character of securities held as stock-in-trade will not change. Moreover, the Department has not disputed the fact that the income derived by the assessee from sale of securities has been offered as business income and the department has also accepted it. Applying the same logic, the expenditure incurred by way of payment of broken period interest while purchasing such securities must be treated as business expenditure. The decisions relied upon by the learned Authorised Representative clearly support this view. In aforesaid view of the matter, we uphold the decision of the learned Commissioner (Appeals) on this issue by dismissing the ground raised by the Revenue.”

9. Since the facts of the case at hand are identical to ones as decided by the co-ordinate bench of the Tribunal. We, therefore, respectfully following the same dismiss the ground No.2 raised by the Revenue.

10. The issue raised in ground No.3 is against the deletion of disallowance of depreciation arising out of valuation of securities held as stock in trade at the end of accounting year which was rejected by the AO and added to the income of the

assessee on the ground that the securities were held by the bank as investments and not as stock in trade.

11. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee on this ground by following the decision of Hon'ble Madras High Court in the case of CIT vs. Karur Vaisya Bank Ltd. (supra).

12. The ld AR, at the outset, submitted that the issue is squarely covered in assessee's own case by the decision of co-ordinate bench of the Tribunal in ITA No.676/Chennai/2014 wherein it was held that depreciation on valuation of securities has to be allowed to the assessee.

13. The Ld. D.R. relied on the orders of authorities below.

14. We have heard the rival submissions of both the parties and perused the material on record including the decision of co-ordinate bench of the Tribunal in assessee's own case in ITA No.676/Chennai/2014 and observed that identical issue has been decided in favour of the assessee. The operative part of the said order has been reproduced as under:

“20. In grounds no.3.1 and 3.2, Revenue has challenged allowance of depreciation claimed by the assessee on securities held as stock-in-trade.

21. While completing the assessment for the impugned assessment year, the Assessing Officer disallowed assessee's claim of depreciation on the securities, since, he held them to be in the nature of investment and not stock-in-trade. The learned Commissioner (Appeals), however, allowed assessee's claim by treating the securities held as stock-in-trade. While deciding Revenue's appeal, the Tribunal restored the issue to the Assessing Officer for fresh adjudication after verifying whether securities are held as "investment" or "stock-in-trade". At the time of giving effect to the directions of the Tribunal, the Assessing Officer in order dated 4th June 2012, disallowed assessee's claim of depreciation on the reasoning that the securities are held as investment and not as stock-in-trade. However, the learned Commissioner (Appeals) while deciding assessee's appeal allowed the depreciation claimed, since, the securities held by the assessee are treated as stock-in-trade.

22. We have considered rival submissions and perused materials on record. While deciding ground no.1 herein before, we have held that the securities held by the assessee are stock-in-trade. That being the case, depreciation claimed by the assessee has to be allowed. The decision of the learned Commissioner (Appeals) on this issue is upheld by dismissing the ground raised.”

Following the decision of the coordinate bench in assessee own case, we dismiss the appeal ground no. 3 by upholding the order of ld CIT(A) on this issue.

4. Learned representatives have also fairly agreed that the issues raised on this appeal are squarely covered by the aforesaid decision. We see no reasons to take any other view of

the matter then the view so taken by the coordinate bench. Respectfully following the same, we approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.

5. In the result, the appeals filed by the Revenue stands dismissed. Order pronounced in open court today 17th day of March, 2021.

Sd/-
Amarjit Singh
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 17th day of March, 2021

Copies to:

(1)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai

