

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA Nos.1522 & 1523/Bang/2018
Assessment years : 2013-14 & 2014-15

The Deputy Commissioner of Income Tax, Circle 5(2)(1), Bengaluru.	Vs.	M/s. The National Co-operative Bank Ltd., No.73/1, Gandhi Bazar Main Road Bengaluru – 560 004. PAN: AAABT 0126C
APPELLANT		RESPONDENT

Appellant by	:	Shri G. Elamuruga, Jt. CIT(DR)(ITAT), Bengaluru.
Respondent by	:	Shri Ravishankar, Advocate

Date of hearing	:	02.09.2021
Date of Pronouncement	:	16.09.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of CIT(Appeals)-5, Bengaluru dated 29.02.2018 for the assessment years 2013-14 & 2014-15 on the following grounds:-

- “(a) The order of the learned CITCA) is opposed to law and facts of the case.
- (b) Whether on the facts and circumstances of the cases and in law, CITCA) was right in holding that since no exempt income has been received by the assessee during the year no disallowance/addition can be made u/s 14A rw Rule 8D of Income tax Rules, 1962 ignoring the Board's circular No. 5/2014 ?

- (c) Whether on the facts and circumstances of the cases and in law, CIT(A) was right in allowing depreciation on investments simply relying on the decision of the Karnataka High Court in the case of Karnataka Bank Limited Vs ACIT (2013) 356 ITR 549 when the issue has not reached finality as the department has not accepted the High Court Order and has filed SLP before Hon'ble Supreme Court which is pending?
- (d) Whether on the facts and circumstances of the cases and in law, CIT(A) was right in allowing amortization of premium simply relying on ITAT Panji Bench order in the case of Khanapur Co-operative Bank Ltd. Vs ITO and the decision of the Bangalore Bench order in ITA No. 112(Bang)/2008 in the case of Corporation Bank Vs ACIT Mangalore when these decisions have not been accepted by the Department and Further appeal to High Court have been filed which is pending adjudication?
- (e) Whether on the facts and circumstances of the cases and in law, CIT(A) was right in allowing assessee's claim of payment towards education fund to Karnataka State Co-operative Union, payment of annual subscription to Karnataka State Co-operative urban Federation and payment of benevolent fund to the bank's staff when assessee has made these payments out of appropriation to utilize the funds instead of showing the real income and claiming permissible deductions which are below the line items and can not be deducted from the gross total income?
- (f) Whether on the facts and circumstances of the cases and in law, CIT(A) was right in allowing assessee's claim of payment towards education fund to Karnataka State Co-operative Union, Payment of annual subscription to Karnataka State Co-operative urban Federation and payment of benevolent fund to the bank's staff when the assessee has failed to debit these payments towards various funds in its P& L account and also failed to claim the deductions in its return of income?

- (g) For these and other grounds that may be urged upon at the time of hearing, it is prayed that the order of CITCA) in so far as it relates to the above grounds, may be reversed and that of the Assessing Officer may be restored.
- (h) The appellant craves leave to alter, amend or delete any of the grounds mentioned above and / or add any new grounds on or before the hearing.”

2. The first ground is with regard to disallowance u/s. 14A of the Act r.w. Rule 8D of the Income Tax Rules, 1962. The AO gave a finding that the assessee had admitted tax free interest income of Rs.16,96,744 and dividend income of Rs.1,07,30,771, however no expenditure was disallowed u/s. 14A of the Act. The CIT(Appeals) observed that no disallowance us/. 14A should be made for the year in the absence of exempt income and he allowed the appeal of the assessee on this issue. In our opinion, the order of CIT(Appeals) is against the facts and circumstances of the present case. It is admitted fact that assessee earned exempt income in the form of tax free interest income of Rs.16,96,744 and dividend income from mutual fund of RS.1,07,30,771. Being so, the finding of the CIT(Appeals) is against the facts of the case, which cannot be sustained.

3. On the other hand, the contention of the Id. AR is that the assessee has investment in mutual funds and tax free bonds of out of its own funds out of share capital, free reserve and it exceeds the average value of investments during the AY 2013-14. No direct expenditure to earn exempt income, therefore section 14A r.w. Rule 8D is not applicable. However, these facts have not been examined by the CIT(Appeals) while deleting the addition holding that there is no exempt income, which is not correct. Accordingly, we set aside his order and restore this issue back to the Assessing Officer for examination and fresh decision in accordance with law after providing opportunity of hearing to the assessee.

4. The next ground is regarding disallowance of Rs.9,87,000/- on account of depreciation claimed on investments. The assessee submitted that depreciation on investments in Govt. securities characterized as Securities Available For Sale (AFS) and Held for Trade (HFT) and that the depreciation on these investments has been made as per RBI guidelines. As per the Banking Regulation Act, 1949. 'Banking' as defined in the Section 5(b) of the Banking Regulations Act, 1949 is the business of "Accepting deposits of money from the public for the purpose of lending or investment'. Therefore, the activity of the banking includes investments in securities prescribed by the Reserve Bank of India up to 25% of the demand and time liabilities. It is further submitted that as per RBI Master circular No.RBI/2015-16/43 DCBR.BPD (PCB).MC.NoA/16.20.000/2015-16 dt. 1 July 2015, the investment held under Available for Sale (AFS) and Held for Trade (HFT) categories shall be valued script wise and depreciation/appreciation shall be aggregated for each classification separately. The net depreciation, if any shall be provided for and net appreciation if any should be ignored. The provision required to be created on account of depreciation in any year should be debited to profit and loss account and an equivalent amount shall be transferred to Investment Depreciation Reserve Account. Accordingly, the investment will be reviewed every month and it will be valued with reference to FIMMDA valuation on Mark to Market, which is a statutory requirement as per RBI Master Circular 2003 and as per investment policy of the bank. Accordingly, the investment depreciation computed in terms of prudential norms of the Reserve Bank of India is debited to Profit and loss account and claimed as expense which is allowable under the Income Tax Act also. Reliance is placed on judgment of Hon'ble High Court in the case of *Punjab and Sind Bank Vs. CIT (ITA 634/2009)* and the same has been upheld by the Delhi High Court. Reliance is also placed on the judgement of Hon'ble Karnataka High Court in the case of *Karnataka Bank Ltd vs ACIT (2013)*

356 ITR 549 wherein the Hon'ble High Court allowed the depreciation on investment in securities held for trading and available for sale. However the AO has not followed the judgement of Hon'ble High Court of Karnataka which is the jurisdictional court for the reason that the issue is pending for adjudication before the Hon'ble Supreme Court. The stand taken by the Assessing Officer in not considering the judgement of Hon'ble High Court of Karnataka is erroneous as it has been held that not following the decision of Hon'ble Karnataka High Court merely for the reason that the Dept. is in further appeal is contrary to the decision of Hon'ble Supreme Court [*DCIT v. M/s. Raghuvir Synthetics Ltd. - 2017 (4) TMI 975*] (2017 Taxcorp (DT) 68977 (SC)] which is binding on the revenue authorities to follow the judgment of the jurisdictional court until contrary order is passed by the next superior court. Therefore, the assessee submitted that the addition of Rs.9,87,000 is to be deleted.

5. The CIT(Appeals) following the Hon'ble Jurisdictional Karnataka High Court in the case of *Karnataka Bank Ltd Vs ACIT (supra)* allowed this ground of the assessee. Against this, the revenue is in appeal before us.

6. We have heard both the parties and perused the material on record. In our opinion, the issue is squarely covered in favour of the assessee by the judgment of the Hon'ble High Court of Karnataka in case of *Karnataka Bank Ltd. v. ACIT, 356 ITR 549 (Karn)* wherein depreciation on investment in securities held for trading and available for sale was allowed. Being so, the CIT(Appeals) followed this judgment of the High Court. We do not find any infirmity in his order and confirm the same. This ground of the revenue is dismissed.

7. The next ground relates to amortization of premium debited to profit and loss account and the amount claimed in the return of income. The assessee submitted that as per Master Circular No. UBD.BPD.(PCB).

MC.No.2/16.20.000/2007-08 dt. 02 July 2007 and Master Circular No. UBD. BPD (PCB).MC.No.12/16.20.000/2014-15 dt. 01 July 2014 issued by Reserve Bank of India as applicable to banks, Investments classified under 'Held to Maturity' category need not be marked to market and will be carried at acquisition cost unless it is more than the face value, in which case the premium should be amortized over the period remaining to maturity. The assessee further submitted that it had investment in Central and State Government Securities amounting to Rs.257.93 crores as at the end the previous year which includes premium amount of Rs.82,91,600. The investment includes held for trade amounting to Rs. 77,06,41,450 and held to maturity amounting to Rs.1 ,80,86,84.410. The amortization of premium claimed includes Rs 82,91,600 debited to profit and loss account pertaining to the premium amortized for AY 2013-14. Further a sum of Rs.41,90,874 has been claimed towards 1/5th of the premium pertaining AYs 2011-12, AY 2012-13 and AY 2013-14 aggregating to 3/5th of Rs.69,84,790.

8. In the case of the assessee, where the deduction under the head amortization of premium was disallowed for the AY 2010-11, the CIT(Appeals) vide order dt. 19.06.2013 held that the assessee is entitled for amortization of the premium paid on investment and entitled to claim the deduction spread over a period of five assessment years including the assessment year 2010-11. Accordingly, the assessee has claimed the amortization of premium equivalent to 3/5th of the premium pertaining to AY 2011-12, 2012-13 and 2013-14 along with the premium paid for the AY 2013-14. In so far as the amortization of premium pertaining to AY 2013-14 debited to profit and loss account, Rs 82,91,6001- is claimed in full based on the order of the ITAT Bangalore in the assessee's own case for the AY 2007-08 and 2008-09. The ITAT while passing the order has relied on the decisions of ITAT Cochin Bench (2010) 38 SOT 553 (Cochin) in the case of

Catholic Syrian Bank Ltd., Vs ACIT , Khanapur Co-operative Bank Ltd. Vs ITO and ITAT Bangalore in ITA No. 112(Bang.)/2008 AY 2004-05 in the case of Corporation Bank Vs ACIT, Mangalore. Accordingly, the CIT(Appeals) following the above Tribunal's orders allowed this ground of the assessee. Against this, the revenue is in appeal before us.

9. After hearing both the parties, we find that this issue is covered by the order of this Tribunal in the case of *Corporation Bank v. ACIT, in ITA No.112/Bang/2012* in favour of the assessee. Being so, the CIT(Appeals) followed the same order of the Tribunal and hence we do not find any infirmity in the impugned order and the same is confirmed.

10. The next issue for consideration is with regard to assessee's claim of payment towards education fund to Karnataka State Co-operative Union, payment of annual subscription to Karnataka State Co-operative urban Federation and payment of benevolent fund to the bank's staff. There were no additions on this issue by the AO. However, the CIT(Appeals) has unilaterally considered these grounds and given relief. He fell into error in considering and adjudicating these grounds. Accordingly, the findings of the CIT(Appeals) in respect of these issues are vacated and the grounds raised by the revenue are allowed.

11. In the result, the appeal of the revenue is partly allowed.

Pronounced in the open court on this 16th day of September, 2021.

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 16th September, 2021.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.