

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'F' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),
and Pavan Kumar Gadale (Judicial Member)]**

ITA No. 6990/Mum/2019
Assessment year: 2010-11

Mumbai District Central Co-op Bank LtdAppellant
*Mumbai Bank Bhawan, 207, Dr. D.N Road,
Fort, Mumbai 400001[PAN: AAAAM3185D]*

Vs

Income Tax Officer -1(3)(1)
Mumbai.Respondent

Appearances by

Ravi Sawana for the appellant
S N Kabra for the respondent

Date of concluding the hearing : 18/10/2021
Date of pronouncement of order : 18/10/2021

ORAL ORDER

(Dictated in the open court)

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee-appellant has challenged correctness of the order dated 21.08.2019 passed by the learned CIT(A) in the matter of assessment under section 143(3) r.w.s.263 of the Income Tax Act, 1961 for the assessment year 2010-11.

2. Grievances raised by the assessee as set out in the memorandum of appeal are as follows:-

Being aggrieved by the order of the learned Commissioner of Income-tax (Appeals) - 3, Mumbai, dated 21.08.2019, the Appellant prays to prefer the present appeal on the following ground:

1. In the facts and circumstances of the case and in law, the Ld. AO erred in disallowing the valuation loss in respect of securities held by the Appellant as Available for Sale and Held for Trading.

2. In the facts and circumstances of the case and in law, the Ld. AO erred in not treating the Appellant as a Banking Company governed by the Banking Regulation Act, 1949 and the circulars and directions issued by the Reserve Bank of India.

3. In the facts and circumstances of the case and in law, the Ld. AO erred in not following the instructions of the Central Board of Direct Taxes issued in Instruction No. 17/2008, wherein the CBDT has expressly instructed Officers to allow depreciation on securities held by banks in the Available for Sale and Held for Trading category.

4. In the facts and circumstances of the case and in law, the Ld. AO erred in treating the depreciation in the value of the investments as only a notional loss and not an accrued or actual loss, thus disallowing deduction u/s 37.

5. In the facts and circumstances of the case and in law, the Ld. AO erred in treating the loss on valuation of securities as a provision for unascertained liabilities.

6. In the facts and circumstances of the case and in law, the Ld. AO erred in holding that investments in government securities by banks cannot be held as stock in trade.

7. In the facts and circumstances of the case and in law, the Ld. AO erred in treating the valuation loss on securities as loss on conversion of securities from one category to another.

3. As a plain reading of the above grounds of appeal would show, what are termed as the grounds of appeal are essentially in the nature of arguments in support of the core grievances of the assessee that on the facts of the circumstances of the case the learned CIT(A) erred in confirming the addition of Rs. 4,02,87,000/- in respect of valuation of investments held as stock in trade.

4. To adjudicate on this appeal only a very few material facts need to be taken note of. The assessee before us is a co-operative bank and the present assessment proceedings were initiated as a result of revision order u/s. 263 passed by the learned Commissioner holding that non-examination of breakup of investment into three categories i.e. "Held to Maturity", "Available for Sale", and "Held for Trading", and non-examination of the quantification of loss arising from the valuation of the securities rendered the original assessment proceedings erroneous and prejudicial to the interest of the revenue. It was this backdrop that the present assessment proceedings were resorted to. During the course of the resultant assessment proceedings the Assessing Officer noted elaborate submissions made by the assessee with respect to the details furnish in the brief categories and the claim as to why the loss of valuation in respect of the securities held as AFS & HFT that is available for sale and held for trading are to be allowed as deduction in the computation of business income. The Assessing Officer, however, proceeded to brush aside all these legal submissions and factual aspects and made the same addition of Rs. 4,02,87,000/- again by observing as follows:-

As it is merely a provision and notional loss to the assessee it is not allowable expenditure u/s 37. The section 37 of the I.T. Act, 1961, any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal

expenses of the assessee), laid down or expended wholly and exclusively for the purpose of business or profession shall be allowed in computing the income chargeable under the head "profit and gain of business or profession". This allowance of deduction is restricted only in respect of accrued or known liability. Provision for unascertained liabilities do not qualify for deduction. Investment in government securities by banks cannot be held as stock in trade, it is long term investment and therefore capital in nature. Profit or loss on such investment would arise only when this type of asset is finally transferred, sold or discarded. It cannot be revalued at the time of closing of each accounting period. Investments are always valued on the basis of cost price. Accordingly, loss on mere conversion of securities from one category to another cannot be allowed as deduction.

In the view of the above assessee's claim of Rs. 4,02,87,000/- on account of Valuation loss charged to investment depreciation reserve ' is disallowed and added back to total income of the assessee.

5. Aggrieved by the aforesaid addition of Rs. 4,02,87,000, the assessee preferred an appeal before the learned Commissioner appeals, but without any success. While learned Commissioner referred to the observations made by the Assessing Officer, he did not deal with the arguments advanced by the assessee and proceeded to confirm the stand of the Assessing Officer by simply observing that in view of "the above finding of the AO no interference is called for in the order passed by the Assessing Officer". The assessee is not satisfied and in further appeal before us.

6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

7. We find that so far as the question of allowability of deduction on account of fall in value of the investments held as stock and trade are concerned it cannot even be in serious doubt as to whether the loss of in account of valuation of stock can indeed be allowed as a deduction in computation of business income. Right from Hon'ble Supreme Court's landmark judgment in the case of *Chainrup Sampatram vs. CIT 24 ITR 481* the law is very well settled, duly recognizing the principle of conservatism embedded in the accountancy practices, that if there is any anticipated loss, whether crystallized or not the same is to be allowed as the deduction while anticipated profits are not be taken in to account for this purpose. Whether the loss is crystallized or not as long as it can be reasonably anticipated, on the basis of the situation as it prevails at the year end, which is what is reflected by the fall in value of stock indicates, the same is taken in account for computation of business loss. In the case of *United Commercial Bank vs CIT 240 ITR 355*, Hon'ble Supreme Court has taken notes of this foundational legal position and held that loss on all in value of investments which are held as stock and trade by the bank constitute and admissible deduction. We may in this regard reproduce the following observation made by the lordships while dealing with this question.

22. Hence, for the purpose of income tax whichever method is adopted by the assessee a true picture of the profits and gains, that is to say, the real income is to be disclosed. For determining the real income, the entries in a balance sheet required to be maintained in the statutory form, may not be decisive or conclusive. In such cases, it is open to the Income Tax Officer as well as the assessee to point out the true and proper income while submitting the

income tax return. In Kedarnath Jute Mfg. Co. Ltd. v. Commissioner of Income Tax (Central), Calcutta, (1971) 82 ITR 363, this Court has negated the contention that "if an assessee under misapprehension or mistake fails to make an entry into the books of account and although, under the law, a deduction must be allowed by the Income-Tax Officer, assessee will lose the right of claiming or will be debarred from being allowed that deduction." The Court held that whether the assessee is entitled to the particular deduction or not will depend upon the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter. In the present case, the question is slightly different. For reasons, Central Government, in exercise of the powers conferred by Section 53 of the Banking Regulation Act, and on the recommendation of the Reserve Bank of India, permitted the assessee not to disclose the market value of its investment in the balance sheet required to be maintained as per the statutory form. But as the assessee was maintaining its accounts on mercantile system, he was entitled to show his real income by taking into account market value of such investments in arriving at real taxable income. On that basis, therefore, Assessing Officer has taxed the assessee.

23. *From the decisions discussed above, it can be held :*

- (1) That for valuing the closing stock, it is open to the assessee to value it at the cost or market value, whichever is lower;*
- (2) In the balance sheet, if the securities and shares are valued at cost but from that no firm conclusion can be drawn. A taxpayer is free to employ for the purpose of his trade, his own method of keeping accounts, and for that purpose, to value stock-in-trade either at cost or market price;*
- (3) 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 accounts or of valuation;*
- (4) The concept of real income is certainly applicable in judging whether there has income or not, but in every case, it must be applied with care and within their recognised limits;*
- (5) Whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation; and*
- (6) Under Section 145 of the Act, in a case where accounts are correct and complete but the method employed is such that in the opinion of the Income Tax Officer, the income cannot be properly deduced therefrom, the computation shall be made in such manner and on such basis as the Income-Tax Officer may determine.*

24. *In the present case, the High Court has disallowed the claim of the appellant after holding thus :*

- (a) The entries made by the assessee in its books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss;*
- (b) The method of accounting namely "at cost or market value whichever is lower" followed by the appellant for valuing its stock-in-trade (Investment) for income tax purpose is the correct and the permissible method in law. If this method is not followed in writing and preparing accounts consistently, the assessee cannot claim a notional method of stock valuation only for*

computation of income by the Tax authorities without following the same method in writing and preparing accounts.

(c) Since stock valuation is admittedly a method of accounting the assessee Bank can claim the benefit of stock valuation "at cost or market value, whichever is lower" only if such method is actually followed and adopted by him in preparing the final accounts. Without following this method in preparing the accounts, which are required to be prepared and presented under Section 29 of the Banking Regulation Act, 1949 in the form set out in the third Schedule thereto, the assessee Bank cannot be permitted to claim a loss on revaluation by claiming different method of stock valuation notionally for income tax purposes only.

25. 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 income tax return on the real taxable income in accordance with a method of account adopted by the assessee consistently and regularly. That cannot be discarded by the departmental authorities on the ground that assessee was maintaining 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 balance sheet in the prescribed form and it had no option to charge 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 assesses in the present case.

8. We may also add that even in the revision order passed by the learned Commissioner it was never the case of the revenue that the loss on account all in value of investment *per se* inadmissible. As the matter of fact in paragraph 7 (we should have been correctly number at para 9-at page 3 and 4 of the order dated 25.03.2015) of the said order the learned Commissioner had categorically pointed out that it was non-examination of the details rather than inadmissibility deduction which was the proximate reason for the revision power being exercised. In these circumstances in our considered view the action of the Assessing Officer, which has been upheld by the learned CIT(A) in a very mechanical manner without application of mind, cannot meet our judicial approval. We reverse the stand of the authorities below, and direct the Assessing Officer to delete the impugned disallowance 4,02,87,000/-.The assessee gets the relief accordingly.

9. In the result, the appeal is allowed in the terms indicated above. Dictated and pronounced in the open court today on the 18th day of October 2021.

Sd/-
Pavan Kumar Gadale
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 18th day of October, 2021

Copies to:

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

By order

*Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*

