

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)
**Before: Ms. Annapurna Gupta, Accountant Member
And Shri TR Senthil Kumar, Judicial Member**

**ITA No. 385/Rjt/2016
Assessment Year 2010-11**

The Asstt. Commissionr of Income Tax, Circle- 1(2), Rajkot (Appellant)	Vs	The Rajkot District Co- op. Bank Ltd., Jilla Bank Bhavan, Kasturba Road, Rajkot PAN No:AAAAR0564K (Respondent)
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**Appellant by : Shri Ajay Atri, CIT/DR
Respondent by : Shri Deepak Rindani, A.R.**

Date of hearing : 01-04-2022
Date of pronouncement : 29-06-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Revenue against the order passed by the Commissioner of Income Tax (Appeals)-2, Rajkot, (in short referred to as CIT(A)), dated 15-07-2016, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2010-11.

2. Briefly stated the assessee is a cooperative society engaged in banking business and other activities. Return declaring income of Rs.11,11,74,198/-

was filed by the assessee for the impugned year, i.e A.Y 2010-11. Thereafter assessment u/s 143(3) of the Act was framed making additions to the returned income to the tune of Rs.9,57,20,939/- which included among others the following:

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|--|------------------|
| 1. Disallowance of claim of depreciation on securities | Rs.9,07,85,000/- |
| 2. Addition of Interest on NPA | Rs.29,11,000/- |

Both the above were deleted in appeal by the Ld.CIT(A) ,aggrieved by which the Revenue has come up in appeal before us.

3. Ground of appeal no. 1 raised by the Revenue reads as under:

- 1. The Ld. CIT(A)-2, Rajkot has erred in law and on facts in deleting the disallowance of depreciation claimed on securities of Rs.9.07.85,000/-.*

3.1. As transpires from the order of the authorities below, the assessee had claimed depreciation on conversion of securities classified as Held to Maturity (HTM) to those classified as Available for Sale (AFS). The same was disallowed by the A.O. primarily for the reason that the HTM securities were capital assets and the loss therefore was capital in nature and there was no specific provisions under the Income Tax Act allowing such loss in the case of the assessee.

4. Before the Id. CIT(A), we have noted, the assessee explained that dealing in shares and securities was treated as part of the business of Banking as per Section 6(1)(a) of the Banking Regulation Act and all such investments were required to be categorized as (i) Held to Maturity (HTM) (ii) Available for Sale (AFS) and (iii) Held for Trading (HFT) as per RBI Circular No. RBI/2009-10/79-UBD.BPD(PCB.MC No. 12/16.20.000/2009-10 dated 01.07.2009. That as per the said circular of the RBI these assets were to be valued as per the method prescribed in the circular and the said circular also stated that the assessee could change the category of these assets shifting them from one category to another with the approval of the Board of Directors and further that the transfer of scrips was to be done at the cost of acquisition or book value or market value as on the date of transfer whichever was less and depreciation if any on such transfer should be fully provided. That in accordance with this RBI Guidelines, the assessee had provided for the depreciation in the securities transferred from HTM to AFS category.

4.1. It was further pointed out that even the Income Computation and Disclosure Standard (ICDS) applicable for computation of Income chargeable under the head "Profits and Gains of Business and Profession", Standard VIII thereof relating to securities held by Banks requires valuation of securities as recommended by the RBI in this regard.

5. Ld.Counsel for the assessee contended that though the said standards were applicable from A.Y 2017-18 onwards but are still relevant for earlier

years also reflecting the position taken by the Revenue in this regard albeit in subsequent years.

5.1. It was further pointed out that the Hon'ble Apex Court in the case of CIT vs. Nawanshahar Central Cooperative Bank Ltd., 289 ITR 6 (SC) had held that investments made by banking concerns were part of the business of banking and therefore all income arising from such investment would be attributable to the business of bank falling under the head Profits and Gains of Business. That it had categorically held that the principle would also cover situation where the Co-operative Bank carrying on the business of bank was statutorily required to place a part of its funds in approved securities. That noting this position of the Apex Court, the CBDT had issued a Circular No. 18/2015 to the effect that income arising from investments made by banking concerns was to be taxed under the head profits and gains of business and profession.

6. It was further pointed out that the Hon'ble Apex Court in the case of United Commercial Bank vs. CIT (1999) 240 ITR 355 (SC) had held that where the assessee for the purposes of its Income Tax return had valued its stock in trade at a different method as that followed for the purposes of its balance sheet prepared under the Banking laws and which method had been consistently accepted by the department for the last 30 years, no disallowance could be made on account of the assessee having followed a different method for valuing its stock in trade for Income Tax return purposes.

7. It was also pointed out that Courts had on several occasions held that the assessee was entitled to claim depreciation on securities though notional in nature. It was further pointed out that the Hon,ble High Court of Bombay in various decisions had held the claim of deduction on account of depreciation in value of investments on conversion of AFS securities to HTM securities to be in line and in accordance with the decision of the Hon'ble Apex Court in UCO Bank (supra). Our attention was drawn to the following decision in the case of CIT vs. Bank of Baroda (2003) 129 taxmann.com 716, and CIT-2, Mumbai vs. HDFC Bank Ltd. (2014) 52 taxmann.com 333.

7.1 The assessee accordingly contended that it had claimed depreciation in value of securities on shifting from HTM category to AFS category as per norms prescribed by the RBI in this regard and these investments were SLR investment, pertained to the business of the assessee and the claim of depreciation therefore was in accordance with position of law in this regard as above.

8. Ld. CIT(A) found merit in the contention of the assessee and allowed the assessee's appeal.

9. Ld. D.R. before us has been unable to point out any infirmity in the facts and position of law as pointed out by the Id. Counsel for the assessee before us, though he relied heavily on the order of the AO.

10. We have heard the rival contentions carefully. The issue to be adjudicated is whether depreciation in value of securities, on conversion from HTM category to AFS category is allowable.

11. To adjudicate the issue certain regulations applicable to the assessee and the terms used therein need to be clarified.

12. Admittedly the assessee is into the business of Banking and is regulated by the Banking Regulation Act, 1979. As per section 6 of the said Act a Banking company, in addition to the business of Banking can engage in other activities also, specified therein, which include dealing in securities. The relevant portion of section 6 of the Banking Regulation Act was placed before us at P.B 25 and is reproduced hereunder for clarity:

Banking Regulation Act, 1979

Section - 6

6. Forms of business in which banking companies may engage

(1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely:-

(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundies, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or

for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;
(b) acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of any description

13. Taking note of the same, the Hon'ble apex court, in the case of Nawanshahar Central Cooperative (supra) held that income arising from investments of Banks, being attributable to business of banking, fall under the head "Profits and Gains of Business and Profession". In line with the said decision the CBDT issued a circular No.18/2015 dated 2nd November 2015 (P.B 31) directing all incomes from investments of banks, including non SLR securities, to be treated as business income and expenses against the same to be allowed accordingly.

14. Going forward we have further noted that as per Master Circular issued by RBI on Investments by Primary (Urban) Cop-operative Banks dated 1st July 2009, copy placed before us at P.B 27, all cooperative banks are required to classify their entire investment portfolio(including SLR and non SLR securities) under three categories:

- Held to Maturity (HTM)
- Available for Sale (AFS)
- Held for Trading (HFT)

15. The above categorization being based on the nature and purpose of investments made by the banks. The said circular further deals with the manner of shifting the securities from one category to another and valuation on shifting as under :

15.5 Shifting of investments

15.5.1 Banks may shift investments to/from 'Held to Maturity' category with the approval' of the Board of Directors once in a year. Such shifting will normally be allowed at the beginning of the accounting year. No further shifting to/from this category will be allowed during the remaining part of that accounting year.

15.5.2 Banks may shift investments from 'Available for Sale' category to 'Held for Trading' category with the approval of their Board of Directors. In case of exigencies, such shifting may be done with the approval of the Chief Executive of the Bank, but should be ratified by the Board of Directors.

15.5.3 Shifting of investments from 'Held for Trading' category to 'Available for Sale category is generally not allowed. However, it will be permitted only under exceptional circumstances such as mentioned in paragraph 15.3.2 above, I subject to depreciation, if any, applicable on the date of transfer, with the 1 approval of the Board of Directors/Investment Committee.

15.5.4 Transfer of scrips from one category to another, under all circumstances, should be done at the acquisition cost/book value/market value on the date of transfer, | whichever is the least, and the depreciation, if any, on such transfer should be fully provided for.

(emphasis provided by us)

16. As is evident from a bare perusal of the above all shifting of securities from one category to another has to be done at cost, book value or market value which ever is lower and depreciation if any on such shifting has to be fully provided for.

17. Further our attention was also drawn to ICDS VIII, being accounting policies to be followed for computing incomes under the Income Tax Act, 1961, and we have noted that Part B of the standard dealing with Securities held by Banks and other Financial Institutions requires the valuation of such securities in accordance with Guidelines issued by RBI in this regard. The relevant portion of the ICDS VIII placed before us at P.B 40 is as under

Scope

1. This part of Income Computation and Disclosure Standard deals with securities held by a scheduled bank or public financial institutions formed under

a Central or a State Act or so declared under the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013 (18 of 2013).

Definitions

2(1) The following terms are used in this part of Income Computation and Disclosure Standard with the meanings specified:

(a). "Scheduled Bank" shall have the meaning assigned to it in clause (ii) of the Explanation to clause (vii) of sub-section (1) of section 36 of the Act.

(b). "Securities" shall have the meaning assigned to it in clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956) and shall include share of a company in which public are not substantially interested;

2(2) Words and expressions used and not defined in this part of Income Computation and Disclosure Standard but defined in the Act shall have the meaning respectively assigned to them in the Act.

Classification, Recognition and Measurement of Securities

3. Securities shall be classified, recognised and measured in accordance with the extant guidelines issued by the Reserve Bank of India in this regard and any claim for deduction in excess of the said guidelines shall not be taken into account. To this extent, the provisions of Income Computation and Disclosure Standard VI on the effect of changes in foreign exchange rates relating to forward exchange contracts shall not apply.*(emphasis supplied by us)*

18. Though admittedly this ICDS is applicable for A.Y 2017-18 onwards but it still reflects the position of the Department on the issue.

Having considered the regulatory framework in which the assessee cooperative Bank operates and the position of law with regard to the treatment of their activity of dealing in securities as above, we shall now deal with the facts of the present case in the above background.

19. In the present case the assessee has converted HTM securities to AFS securities which has resulted in depreciation of their value to the extent of Rs.9,07,85,000/-. Clearly this conversion and its valuation is in accordance with the Guidelines issued by the RBI as reproduced above for cooperative Banks. The said guidelines also require full provision to be made for the depreciation so effected. The said valuation is approved by the ICDS issued

under the Act which though applicable from AY 2017-18 is still reflective of the position of the Department/Revenue in this regard.

20. The activity of investments by Banks being accepted by the Revenue as its Business activity and the claim of the assessee to depreciation in value on conversion of HTM securities to AFS securities, being in accordance with RBI guidelines in this regard and even the Accounting Standards recommended under the Act, the Ld.CIT(A) we hold ,has rightly held the said claim to be allowable for the purposes of computing its business income.

21. In view of the above, we see no reason to interfere in the order of the Ld. CIT(A) allowing the claim of depreciation of Rs.9,07,85,000/-.

Ground no. 1 raised by the Revenue is dismissed.

22. Ground no. 2 reads as under:

2. The Ld. CIT(A)-2, Rajkot has erred in law and on facts in deleting the addition of Rs. 29,11,000/- on account of accrued interest on NPA account as income.

23. As transpires from the order of the authorities below, the impugned addition relates to the reduction in the quantum of interest receivable on bad and doubtful advances from the balance as at the beginning of the year to that as at the end of the year being Rs. 71,37,000/- and Rs. 42,26,000/- respectively which was on account of the interest having been received during the year and was subjected to tax by the AO for the reason that the

assessee was not able to prove that it had been taxed on accrual basis in earlier years.

24. The contention of the assessee all along we have noted has been that the impugned interest receivable as at the beginning of the year amounting to Rs. 71,37,000/- pertained to an advance given to Moviya Seva Sahakari Mandali Ltd. which advance was classified as a NPA long back in 1992, impugned FY before us being 2009-10. That the interest accrued was subjected to tax on accrual basis and the receipt of Rs. 29,11,000/- during the year was on the recommendations of the Vaidyanathan Committee and since this amount received during the year had already been taxed in earlier years on accrual basis, the same could not be subjected to tax again in the impugned year. The assessee had contended that it had been accounting for the interest accrued on this NPA account on accrual basis up to 31/03/2006. But thereafter the interest was being accounted for on receipt basis in line with the norms prescribed by the RBI and followed by the assessee with effect from 1st July, 2006. The assessee had placed copy of ledger account of Interest of Moviya Seva Sahakari Mandali Ltd. account before the A.O. and CIT(A) also and which was placed before us also at paper book at page no. 18 & 19, corroborating its contention that the opening balance of interest receivable of Rs.71,37,000/- pertained to its following accounts:

Shri Moviya Seva Sahkari Mandali Ltd. Account	Interest receivable on 01-04-2009
Conversion 1990—91 & 1991-92 Interest a/c	Rs.36,22,280/-

Short term Interest receivable A/c	Rs.3,93,000/-
Non Agri. Interest Receivable	Rs.31,21,520/-
Penalty Interest Receivable	Rs.58,410/-

25. And in this account, the assessee had been accounting interest on accrual basis up to 30th June, 2006 only and in the impugned year had received amount of Rs. 29,11,000/- on the recommendations of the Vaidyanathan Committee constituted for Revival of Credit Cooperatives. The assessee we have noted also placed the letter issued by NABARD dated 02.04.2009 releasing the recapitalization assistance to the assessee Cooperative Bank on the recommendations of the Vaidyanathan Committee and the copy of the letter was placed before us at paper book page no. 20 & 21. Also placed before us at paper book page no. 20B is the amount directed by NABARD to be adjusted against the account of Moviya Seva Sahakari Mandali Ltd .

26. In view of the above, we find that the assessee has proved with necessary documents that the outstanding interest on bad and doubtful advances of 71,37,000/- pertained to advances given to of Moviya Seva Sahakari Mandali Ltd. and also that the entire interest pertained to the period up to 30th June, 2006 accounted for as interest income of the assessee bank till then and that subsequently no interest income on this account was being accounted for on accrual basis. That it was against the outstanding interest accrued that the assessee had received an amount of Rs. 29,11,000/- during the year on the recommendations of the Vaidyanathan Committee. Thus, we find that the assessee had adequately

established that the interest received during the year on 29,11,000/- pertained to interest of those years when the assessee was accounting for the interest on accrual basis.

27. In view of the above, we find no infirmity in the order of the Ld. CIT(A) deleting the addition made of the impugned amount of Rs. 29,11,000/- again on receipt basis in the impugned year.

28. Ground of appeal no. 2 is accordingly dismissed.

29. In effect, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 29-06-2022

Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER True Copy
Ahmedabad: Dated 29/06/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट