

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.878/Bang/2023
Assessment Year : 2004-05

DCIT, Circle – 1(1), Mangaluru.	Vs.	M/s. Karnataka Bank Ltd., CR Building, Attavara, Mangaluru – 575 001. PAN : AABCT 5589 K
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ananthan S and Smt. Lalitha Rameswaran, Advocates
Revenue by	:	Shri. Ganesh R Ghale, Standing Counsel for Revenue.

Date of hearing	:	08.02.2024
Date of Pronouncement	:	08.02.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the Revenue is directed against CIT(A)'s order dated 13.09.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2004-05.

2. The grounds raised read as follows:

“Whether on the facts and in the circumstances of the case the CIT(A) is right in law in setting aside disallowance made under the head investment portfolio by following earlier decisions which has not reached finality even when the assessing authority rightly made disallowance by holding that irrespective of RBI guidelines were applicable to the assessee for the purposes of the IT Act or not as per the principles of accountancy and the various decisions of this Court,

income should be recognized in a way which reflects a true and fair picture of the affairs of the assessee and accordingly when bank itself is treating the securities as held to maturity for any reason whatsoever the same should be the case for purposes of Income Tax as this representation alone reflects the true picture of the accounts of the assessee?”

3. Brief facts of the case are as follows:

Assessee is a scheduled commercial bank carrying on the business of banking. For the Assessment year 2004-05, assessee in the return of income, had claimed depreciation (valuation loss) on Held to Maturity (HTM) of Rs.22,44,96,976/-. In the assessment completed under section 143(3) of the Act, the AO disallowed the depreciation claimed / valuation loss by holding that HTM investments cannot be treated as stock-in-trade. The Assessment Order was upheld by the CIT(A) and also by the Tribunal. On further appeal, the Hon'ble High Court set aside the issue to the files of the AO. Pursuant to the judgment of the Hon'ble High Court, the AO passed an order holding that assessee is not entitled to deduction on account of diminution in value of investment. The reasons given by the AO are as follows:

- i. The true value of real income to be offered for taxation does not depend on mere entries of books of account.
- ii. The appellant bank cannot have multiple standards with regard to classification of investment for the purpose of taxation
- iii. The appellant ought to have treated investment in securities as investments and not stock in trade for income tax purposes which effectively defeat the purposes of taxing real income of the appellant
- iv. The claim of depreciation on investments made in the computation of income and which is not made in the regular books of account.

4. Aggrieved, assessee filed appeal before the CIT(A). The CIT(A) allowed appeal of the assessee. The CIT(A) held that the AO has failed to understand the

directions of the Hon'ble High Court which had remanded the issue to him. Further, CIT(A) followed the Order of the Tribunal in assessee's own for Assessment Year 2014-15. The relevant finding of the CIT(A) after extracting the Order of the Tribunal in assessee's own case for Assessment Year 2014-15 reads as follows:

“4.5 In view of the above facts, decision of the Hon'ble Karnataka High Court and Bangalore ITAT in appellant's own case, I hold that the appellant is entitled for deduction on a/c of diminution in the value of investment subject to verification as remanded by the Hon'ble High Court. Accordingly, the AO is directed to verify the correctness of quantum of depreciation / diminution in value of investment for the present financial year 2003-04, consistency in the method of valuation, etc at the time of giving appeal effect and allow the deduction so arrived after verification. Nonetheless to say that the appellant shall furnish the complete details with respect to quantification of depreciation in value of investment, method of valuation, consistency in applying method, etc and then AO shall verify the same during order giving appeal effect. Further, the appellant and the AO shall ensure that the profit/loss arising on sale of these investments should be ascertained by considering the value of investments after depreciation / diminution in the value of said investment as claimed under income tax law in earlier years and not as per books of account. Thus, all the grounds of the appeal are allowed for statistical purpose.

4.6 It is pertinent to mention here that the Hon'ble Supreme Court has admitted the SLP filed by the Revenue on this issue in appellant's own case for AY 2008-09 reported at [2022] 142 taxmann.com 65 (SC)/[2022] 288 Taxman 725 (SC) on 11.07.2022. Therefore, AO is advised to keep watch on the final outcome in the said SLP and applied the same in the present assessment year also being identical and similar issue in appellant's own case.”

5. Aggrieved by the Order of the CIT(A), Revenue has filed the present appeal before the Tribunal. The learned DR fairly submitted that in order to keep the issue alive, the appeal has been filed. The learned AR, on the other hand,

submitted that the issue in question is squarely covered by the judgment of the Hon'ble High Court and the Orders of the Tribunal in assessee's own case for Assessment Years 2007-08, 2012-13 and 2014-15 (Refer impugned Order of CIT(A) at page 5)

6. We have heard the rival submissions and perused the material on record. The CIT(A) has restored the matter to the AO to verify the correctness of quantum of depreciation / diminution in value of investment for the present Financial Year 2003-04. The CIT(A) has directed the assessee to furnish the complete details with regard to quantification of depreciation in value of investments / the method of valuation and consistency in applying the method, etc. Since the Hon'ble jurisdictional High Court in assessee's own case has held that assessee is entitled to deduction on account of diminution in value of investment of HTM, we find no reason to interfere with the direction of the CIT(A) in restoring the matter to the AO. It is ordered accordingly.

7. In the result, appeal filed by the Revenue is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Bangalore.

Dated: 08.02.2024.

/NS/*

Sd/-

(GEORGE GEORGE K)
Vice President

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.