

**IN THE INCOME-TAX APPELLATE TRIBUNAL “E” BENCH,
MUMBAI**
**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 1729/Mum/2024
(A.Y. 2013-14)**

Kokan Mercantile Co-op Bank Ltd. 1 st Floor, Habour Crest, Mazgaon, Mumbai-400010	v/s. बनाम	Ast. Commissioner of Income-tax, Circle 20(2), Room No. 217, 2 nd Floor, Piramal Chamber, Lalbaug, Parel, Mumbai-400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAAK2527P		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Tanzil Padvekar
Respondent by :	Shri P. D. Chougule

Date of Hearing	11.07.2024
Date of Pronouncement	12.07.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Additional Commissioner of Income-tax (Appeals), Thiruvananthapuram /National Faceless Appeal Centre, Delhi [hereinafter referred to as “ACIT(A)”] dated 30.01.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2013-14.

2. The assessee has raised following grounds of appeal:

“a. On the facts and in law, Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition made by the Ld. Assessing Officer by treating Premium on investment amortization of Rs. 2,31,500/- as



Capital expenditure holding that such expenditure is not incurring for carrying out business accounts.

b. On the facts and in law, the issue of expenditure of Premium on investment is already concluded in favour of the Appellant in Appellant's own case of ACIT Vs. M/s. Kokan Mercantile Co-operative Bank Ltd., in ITA No. 6057/M/2022.”

3. There is a delay of 8 days in filing of this appeal in respect of which an affidavit has been filed before us stating that the delay occurred due to illness of the counsel Mr. Girish Dave who was admitted to the hospital since 19.02.2024 and eventually expired in the month of March. This resulted in delay of 8 days in filing the appeal. In view of the facts submitted in the affidavit, we find the reasons for delay to be genuine, hence, the delay of 8 days is hereby condoned.

4. Brief facts of the case are that the return for AY 2013-14 was filed declaring a total income of Rs. 7,19,87,590/-. The assessee is a co-operative bank and has income from business of banking and finance. During assessment, disallowance was made on account of expenditure claimed towards premium of investment to the tune of Rs. 2,31,500/-. It was held by the Assessing Officer [AO] that the expenditure is capital in nature and, therefore, not eligible for deduction. Following his own orders for earlier years, the AO disallowed the claim of the expenditure in this year also.

5. The Ld. Addl. CIT(A) also upheld the order of the AO vide appellate order dated 30.01.2024.

6. Before us, the Ld. AR has submitted that this issue is squarely covered in the assessee's own case for earlier years in his favour. We have perused the order



of the co-ordinate bench in ITA No. 281/Mum/2015 for AY 2011-12. It is seen that the issue has been decided in favour of the assessee by following the orders of co-ordinate bench for earlier years in ITA No. 6058/Mum/2012 dated 16.03.2016 for AY 2008-09. The co-ordinate bench while deciding the issue in AY 2008-09 has held as under:

"27.Next ground for our consideration is deletion of Rs. 2,02,50,500/- on account of premium on investment amortization by accepting additional evidence.

28.DR of the revenue has argued that the AO rightly disallowed the amount debited as premium on investment amortization by concluding that investment made in Government Securities and Bonds which was shown under the head "Investment" are capital asset and any expenses paid for such acquisition is of capital expenditure and the same cannot be allowed as a deduction and further argued that the AO is rightly concluded that the guidelines of RBI Directory cannot override the provisions of I.T. Act.

29.AR of the assessee has argued that assessee which is a Co-operative Bank is engaged in the banking business and the investment made by assessee are forming part of banking activity and assessee purchased Government Securities and SLR Bonds for which the assessee paid the premium in advance for the next period and claimed the proportionate premium in the current year investment made by assessee in compliance with the statutory provision and to carry out its banking business and thus investments are banking stock-in-trade and that the banking sector is completely governed by the Directories of RBI and also relied upon the CBDT Circular No. 665 dated 05.10.1993 which clearly speaks about the guidelines prescribed by the RBI that Income-tax Authority are bound to adhere the prescribed guidelines of the RBI. The contents of Circular No. 665 dated 05.10.1993 are reproduced below (gathered from impugned order)

"The question whether a particular item of investment in securities constitutes Stock-in Trade or a Capital Asset is a question of Fact. In fact the banks are generally governed by the instructions of the Reserve Bank of India from time to time with regard to the classification of Assets and also the accounting Standards for investments. The Board has, therefore, decided that the



Assessing officers should determine on the facts and circumstances of each case as to whether any particular security constitutes stock in Trade or investment taking into account the guidelines issued by the Reserve Bank of India in this regards from time to time." Thus this amortization was also done as per the Reserve Bank of India guidelines vide its circular No. RBI/2005-06/341/UBD (PCB). BPD.Cir.41/16.20.00/2005-06 dated March, 29, 2006.

Thus, the amortization of investments is an allowable Revenue Expenditure. The matter was studied in view in view of Section 145(2) of the Income Tax Act, 1961. In fact, no other treatment can be given for valuation of securities than what is prescribed by Reserve bank of India from time to time. Even the banks may provide for excess depreciation on its securities by following more prudent and conservative approach but for its allowability in Income Tax what is prescribed in the guidelines of Reserve bank of India is required to be followed and the Income tax Authorities are bound to adhere to these guidelines by virtue of CBDT circular No. 665.

Thus, accounting treatment cannot supersede the legal principles because as admittedly all are SLR Investments. Further to that if the whole of the Premium is debited in this year then it will show a distorted picture of profit, thus it is spread over a period of maturity."

30 . On relying upon the Circular of CBDT and the other judgments of superior courts and concluded that the question before the CIT(A) is whether a particular item of investment in securities as per the RBI guidelines constitute stock-in-trade or capital assets and after considering the decision of Hon'ble Apex Court in United Commercial Bank vs. CIT reported in 240 ITR 355 and considered the investment made in security as a stock-in- trade.

31.The CIT(A) further relied upon the order of co-ordinate bench in case titled as ACIT vs. The Bank of Rajasthan Ltd. reported in 2011-TIOL 35 and deleted the addition.

32. We have carefully considered the rival contention of the parties and gone through the material available on record and find that the order passed by CIT(A) as discussed above is based on sound reasoning and the circular of CBDT and the judgements of superior courts and the same does not require any interference at our end.

33. In these circumstances, this ground of appeal is also rejected."



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7. Respectfully following the orders of the co-ordinate bench, we allow the deduction on account of amortization of premium on investment claimed by the assessee. The order of the Addl. CIT(A) is, therefore, set aside.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 12.07.2024.

Sd/-

PAVAN KUMAR GADALE

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 12.07.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.