

**IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH,
MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 976/MUM/2024
(A.Y. 2018-19)**

Deputy Commissioner of Income Tax, Room No. 535, Aayakar Bhavan, Mumbai 400 020 Maharashtra	v/s. बनाम	Maharashtra State Cooperative Bank Limited, Sadar Bajar, Blue Shop, Nagpur Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAAT4066A		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Sushil Lakhani
Respondent by :	Smt. Sanyogita Nagpal (CIT - DR)

Date of Hearing	03.10.2024
Date of Pronouncement	07.11.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the Revenue against the order of the Learned Commissioner of Income-tax (Appeals)/ National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 22.12.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2018-19.

2. The grounds of appeal taken by the Revenue are as under:

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.32,69,10,665/- on account of provisions made for Investment Depreciation Reserve".*
2. *The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the AO be restored.*
3. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.*

3. The only issue relates to disallowance of provision of investment depreciation reserve. Brief facts of the matter are that the assessee claimed an amount of Rs. 32,69,10,665/- as "provision for investment depreciation reserve". Ld. AO treated the same as notional expenditure and hence not allowable u/s. 37 of the Act. Assessment was finalized u/s 143(3) after making an addition of Rs 3610665/- on account of disallowance of the provision.

4. Aggrieved with the order, the assessee filed an appeal before the Ld. CIT(A). Vide Order dated 22.12.2023, Ld. CIT(A) allowed appeal of the assessee following the order of the Hon'ble Coordinate Bench in assessee's own case for earlier years.

5. The Revenue is aggrieved and has filed an appeal against the order of the Ld. CIT(A).

6. The appeal of the revenue is delayed by 11 days for which requisite condonation application has been filed by the department. Considering the reasons given therein, the delay of 11 days is hereby condoned. Before us, Ld. DR strongly relied on the order of the Ld. AO. It was pointed out that no details of provision for investment depreciation reserve have been submitted



by the assessee during the course of assessment proceedings. Ld. DR drew our attention to the CBDT Instruction No. 17/2008 dated 26.11.2008 wherein it has been stated as under:

“2. In a recent review of assessment of Banks carried out by C&AG, it has been observed that while computing the income of banks under the head 'Profit and Gains of Business & Profession', deductions of large amounts under different sections are being allowed by the Assessing Officers without proper verification, leading to substantial loss of revenue. It is, therefore, necessary that assessments in the cases of banks are completed with due care and after proper verification. In particular, deductions under the provisions referred to below should be allowed only after a thorough examination of the claim on facts and on law as per the provisions of the I.T. Act., 1961.”

7. It was pointed out by the Ld. DR that no such factual verification of the claim relating to provision of investment depreciation reserve in accordance with the RBI guidelines has been done either at the level of AO or by Ld. CIT(A).

8. On the other hand, Ld. AR explained that the requisite working as per RBI guidelines could not be furnished before the Assessing Officer as the proceedings were undertaken during the Covid pandemic. However, requisite computation was submitted before the Ld. CIT(A). Ld. AR further relied on the order of the coordinate bench in the assessee's own case for AY 2007-08 and 2008-09 for which a consolidated order was pronounced on 23.07.2019, wherein the same issue has been decided.



9. We have considered the rival submissions and perused the material available as well as the order of the co-ordinate bench placed before us. While dealing with the issue of allowance of investment depreciation reserve, Hon'ble Co-ordinate Bench in the order (supra) has decided as under:-

“We have heard both the counsel and perused the records. We find that the issue involved is the debit to the profit and loss account for a sum of Rs. 8,00,00,000/- on account of investment depreciation reserve. The assessing officer has disallowed the same on the ground that this provision is contingent in nature and hence cannot be allowed. However, learned CIT(A) has accepted the submission that the government securities are assessee's stock-in-trade. Hence, it had to be valued at cost or market value whichever is lower at the closing of balance sheet date. That this provision has been worked out on conservative basis. That CBDT circular also permits such depreciation. In this regard learned counsel has further supported this issue by referring to the decision of Hon'ble Bombay High Court in the case of CIT v/s Bank of Baroda (129 Taxman 716) and ITAT Mumbai in Yes Bank Ltd. v/s DCIT (57 Taxman.com 14)

Upon careful consideration, we find that on the facts and circumstances of the case, assessee is entitled to value government securities which are treated assessment stock-in-trade at cost or market value whichever is lower. There is no dispute on the facts the disallowance has been done by the assessing officer solely on the ground that the same is contingent. However, in view of the Hon'ble Bombay High Court decision and CBDT circular referred above, it cannot be so held to be contingent in nature. Hence, we uphold the order of learned CIT(A) on this issue. Hence, this ground raised by the Revenue is dismissed for AY 2007-08.

For AY 2008-09 our order applies mutatis mutandis. Hence, Revenue's appeal for AY 2008-09 also stands dismissed.”

10. However, it is also a fact that no verification of the reserve created as per RBI guidelines has been carried out at any stage. In view of these facts, respectfully following the decision of the coordinate bench, we hold that the assessee is entitled to claim deduction on account of investment depreciation reserve. However, the matter is restored to the Ld. AO for the limited purpose



of factual verification of the working of this reserve as per applicable RBI guidelines, to arrive at the amount of allowable deduction.

11. In the result, the Revenue's appeal is dismissed.

Order pronounced in the open court on 07.11.2024

Sd/-

Sd/-

AMIT SHUKLA

RENU JAUHRI

(न्यायिक सदस्य/JUDICIAL MEMBER)

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 07.11.2024

Lubhna Shaikh / Steno

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.

