

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No. 1175/Bang/2023
Assessment Year: 2013-14

DCIT Circle-2(1)(1) Bangalore	Vs.	M/s Canara Bank FM wing, Head Office, 112, J.C. Road Bangalore 560 002 PAN No.AAACC6106G
APPELLANT		RESPONDENT

Appellant by	:	Sri S. Ananthan, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	22.10.2024
Date of Pronouncement	:	17.01.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal filed by the revenue against the order dated 19.10.2023 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1057209241(1) passed by the ld. CIT(A)/NFAC for the AY 2013-14 u/s 250 of the Income Tax Act, 1961 (in short “The Act”).

2. The grounds raised by the revenue in this appeal are as under:

- 1. The ld. CIT(A) has erred in law by holding profit on sale of shares of CARE Ltd. as Long Term Capital Gain (LTCG) in the hands of the assessee.*
- 2. The ld. CIT(A) has erred in by passing the decision of the Hon’ble Supreme Court of in the case of CIT Vs. Nawanshahar Central Co-operative Bank Ltd. (2007) 160 Taxman 48/289 ITR 6 (SC), where the apex court has held that investment made by a banking concern are part of the business of banking.*
- 3. The ld. CIT(A) has erred in by passing the Circular No.18 of 2015 dated 2.11.2015 issued by the Central Board of Direct Taxes ratifying*

the direction of the Hon'ble Supreme Court in the case of CIT Vs. Nawanshahar Central Co-operative Bank Ltd.

3. Brief facts of the case are that the assessee bank herein is a Government of India undertaking and filed its return of income for the assessment year 2013-14 on 29.11.2013 declaring a total income of Rs.2693.75 crores including long term capital gains. After the scrutiny of the return, the JCIT, LTU, Bangalore (the AO), completed the assessment u/s 143(3) on 27.12.2016 and determined the total income of Rs.5897,92,23,130/-. Aggrieved by the order of assessment u/s 143(3) of the Act dated 27.12.2016. The ld. CIT(A) disposed off the assessee's appeal vide order dated 31.1.2017. Being aggrieved by the order of the ld. CIT(A)-14, LTU, Bangalore dated 31.1.2017, the assessee and revenue have filed cross appeals before the ITAT. The ITAT disposed the appeal 1882 & 1900/Bang/2017 vide order dated 28.9.2018. The Tribunal has granted relief on various issues and directed the AO to freshly verify the fact whether the bank has held shares of CARE Ltd. As investment or Stock in Trade. While giving effect to the order of the ITAT, the ld. AO has not provided relief in relation to addition on the issue of profit on sale of shares in CARE Ltd. And treated the same as business income u/s 28 of the Act. Being aggrieved by the action of the ld. AO the assessee has preferred the appeal before the ld. CIT(A)/NFAC.

3.1 The ld. CIT(A)/NFAC allowed the appeal of the assessee.

3.2 Being aggrieved by the order of ld. CIT(A)/NFAC, the revenue has filed this appeal before us.

4. The ld. D.R. heavily relied on the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Jalandhar v. Nawanshahar central cooperative Bank Ltd reported in (2007) 289 ITR 6 as well as another judgment of the Apex Court in the case of Bank of Rajasthan Ltd v. Commissioner of Income Tax. Further ld. DR also relied upon the circular No. 4/2007 dated 15-06-2007. Lastly the ld. DR submitted that it is well settled that in

banking business, securities purchase by the banks, per se constitute stock in trade of the bank as normal and ordinary banking business is to deal in money credit. The money is parked in readily marketable securities so that it is available to meet the demand of depositors.

5. On the other hand, the Id. AR of the assessee submitted that this issue has been accepted by the Revenue as no substantial question of law raised on this ground, though an appeal was filed before the Hon'ble Karnataka High Court against the Order on other grounds. The Id. A.R. also submitted that the identical issue in the assessee's own case came for adjudication before this Tribunal for the Asst. year 2013-14 in which the shares of care Ltd were sold and the gains were treated as exempt from tax u/s 10(38) of the Act by the assessee. This Tribunal directed to undertake a factual finding to check whether the corresponding assets were held in the past as stock in trade or as investments. If held as stock in trade then the profits arising thereof would have to be treated as business income. Accordingly, the issue was set-aside to the file of AO. In the present case, from the very beginning, the shares of CARE Ltd. were held as an Investment, as the assessee being the promoter & declared the same under category of HTM. Further the Id. AR of the assessee submitted that the assessee in its Balance sheet also treated the shares of CARE Ltd. as investments under the title 'Associates'. Further the investment in subsidiaries, joint ventures and associated companies are brought under Held to Maturity (HTM) category of investment which cannot even stretch of imagination be considered as Stock in Trade. Lastly the Id. AR of the assessee also relied upon the judgment of the Apex Court in the case of Bank of Rajasthan Ltd v. Commissioner of Income Tax as well as the circular No. 6/2016 dated 29-02-2016.

6. We have heard both the parties and perused the materials available on record. It is an undisputed fact that substantial stake in M/s. CARE Ltd. was acquired itself shows that the intention to acquire the shares in the subject company was to hold as a strategic investment for a long period. On account of substantial shareholding in CARE Ltd., assessee bank has treated the same as a strategic investment but not as stock in trade and disclosed the same as an (Associate) in the annual reports. It is also not disputed fact that the funds deployed in CARE Ltd. are classified as investment and declared under the category HTM (Held to Maturity). Therefore, in our view, these shares cannot be treated as stock in trade. Further, the CBDT vide circular No.6/2006 dated 29.2.2016 had categorically instructed that the AO in holding whether the surplus generated from sale of listed shares or other securities would be treated as capital gain or business income, shall take in to account the following:

- a) Where the assessee itself, irrespective of the period of holding the listed share and securities, opts to treat them as stock in trade, the income arising from transfer of such shares/securities would be treated as base business income.
- b) In respect of listed shares and securities, held for a period of more than 12 months, immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as capital gain, the same shall not be put to dispute by the AO. However, this stand once taken by the assessee in a particular assessment year, shall remain applicable in subsequent assessment years also and the tax payer shall not be allowed to adopt a different/contrary stand in this regard in subsequent years.
- c) In all other cases, the nature of transaction i.e. whether the same is in the nature of capital gain or business income shall continue to be decided, keeping in view the aforesaid circulars issued by the CBDT.

6.1 Therefore, on plain reading of the above it is clear that it is the assessee's desire how to treat the income arising from the transfer & once the particular stand taken by the assessee in a particular Asst year, then tax payers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years.

6.2 The Id. D.R. heavily relied on the judgment of Hon'ble Supreme Court in the case of Navanshahar Central Co-operative Bank Ltd. (supra) and CBDT Circular No.18/2015 dated 2.11.2015, where all investments held by the banking concern are held as part of the business of banking and accordingly pleaded that the profit on sale of such investments are to be treated as business profit u/s 28 of the Act.

6.3 We are of the considered opinion that the entire facts of the present case are different from that as that of case laws relied upon by them. In the case of Navanshahar Central Co-operative Bank Ltd. (supra), the issue was Whether where a Co-operative bank, carrying in business of banking, is statutorily required to place a part of its fund in approved securities, income arising from such investment is deductible under section 80P. The Apex court had categorically held that investments made by a banking concern are part of the business of banking. In the present case also the investments held by banks are treated only as part of the business of banking only but not as a Stock in Trade but as a Capital Asset.

6.4 Further, both the parties also relied upon the judgment of the Apex Court in the case of Bank of Rajasthan Ltd. v. Commissioner of Income Tax in Civil Appeal Nos. 3291-3294 of 2009 dated 16/10/2024 wherein the Apex court held that as per the RBI's guideline dated 16/10/2000, there are three categories of securities i.e. HTM, AFS and HFT. As far as AFS and HFT concerned, there is

no difficulty. When these two categories of securities are purchased, obviously, the same are not investments but are always held by Banks as stock-in-trade. In the present case the shares of CARE Ltd./ Can Fin Homes Ltd. are held as Investment under the category of HTM & therefore it cannot be treated at par with AFS & HFT categories.

6.5 In view of the above, we are completely in agreement with the view taken by the Id. CIT(A)/NFAC in allowing the appeal of the assessee. The AO has accepted that purchase of shares of CARE Ltd. had been classified as investment in schedule 8 of the Balance sheet and accordingly the same has to be treated as capital asset and gains arising there from as LTCG and accordingly we dismiss the appeal of the Revenue.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 17th Jan, 2025

Sd/-

(Waseem Ahmed)
Accountant Member

Sd/-

(Keshav Dubey)
Judicial Member

Bangalore,
Dated 17th Jan, 2025.

VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
- 5 Guard file

By Order

Asst. Registrar
ITAT, Bangalore.