

**आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI**  
**BEFORE SHRI SANJAY ARORA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं./I.T.A. No. 1501/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2009-10)

The Hindustan Co-operative Bank Ltd. 4-A, Devi Galli, Baburao Bobde Marg, Lokhand Bazar, Mumbai-400 009	<b>बनाम/</b> Vs.	Jt. CIT-13(3), Aaykar Bhavan, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABAT 4355 R		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Amar Gahlot, Shri S. Sriram
प्रत्यर्थी की ओर से/Respondent by	:	Shri B. Satyanarayana Raja
सुनवाई की तारीख / Date of Hearing	:	01.7.2016
घोषणा की तारीख / Date of Pronouncement	:	24.10.2016

**आदेश / ORDER**

Per Sanjay Arora, A. M.:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-24, Mumbai ('CIT(A)' for short) dated 19.11.2013, dismissing the Assessee's appeal contesting its assessment u/s.143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2009-10 vide order dated 21.12.2011.

2. The assessee, a co-operative bank in the business of banking, governed by the Banking Regulation Act, 1949 as well as the Maharashtra State Co-operative Societies Act, 1960, claimed 'investment loss adjusted from IDR' in the sum of Rs.80.991 lacs in the computation of its business income for the year (PB pgs. 24-26). It is this claim,

disallowed by the Revenue, which constitutes the principal issue arising for consideration in the instant appeal.

*The facts/Arguments*

3. A sum of Rs.52.74 lacs and Rs.28.251 lacs (total: Rs.80.991 lacs) was transferred from Investment Depreciation Reserve (IDR) to Investment Fluctuation Fund (IFF), i.e., on 9.3.2007 and 4.4.2008 respectively, i.e., by crediting the former account and debiting the latter account (PB pgs. 1, 2). Thereafter, on 4.4.2008, an amount of Rs.52.02 lacs and Rs.43.80 lacs (total: Rs.95.82 lacs), being loss on shifting securities (6.01 GOI 2028 and 6.17 GOI 2023) from AFS to HTM category, was debited to the IDR account, reducing the book value of the securities on account of depreciation with reference to their market value as on the date of transfer (i.e., from AFS category to HTM category), tabulated as under (PB page 3/also refer para 5 of the assessment order):

(Amount in Rs.)

Particulars	Face value	Book value	Market value	Appreciation/ (Depreciation)
6.01% GOI 2028	2,00,00,000	2,06,60,000	1,54,58,000	(52,02,000)
6.17% GOI 2023	2,00,00,000	2,06,60,000	1,63,80,000	(43,80,000)
Total	4,00,00,000	4,14,20,000	3,18,38,000	(95,82,000)
Amount transferred from Investment depreciation reserve				80,99,100

The amount of Rs.80.991 lacs was, accordingly, claimed as shifting loss. The shifting of the securities (from AFS to HTM category), it was explained by the assessee, was done with the approval of the Board of Directors, which, in terms of the RBI Master Circular UBD.BPD(PCB).MC.No./16.20.000/2008-09 (copy on record/pgs. 1-44 of case law compilation – CLC) can be so done once a year, usually at its beginning. Further, the shifting, i.e., from one category to another, should be done at acquisition cost/book value/market value on the date of transfer, whichever is the least, and the depreciation, if any, on the date of such transfer, fully provided for (para 15.5 of the Master Circular, updated up to 30/6/2008). The accounting is strictly

as per the RBI guidelines in the said Circular. The matter, in fact, is covered by the decision by the Hon'ble jurisdictional High Court in *CIT vs. HDFC Bank Ltd.* [2014] 368 ITR 377 (Bom) (pgs. 45-48 of CLC), besides other decisions. On being enquired into the reasons for the said transfer during hearing, it was explained vide Note dated 1.7.2016 (para 1) that anticipating a reduction in the market value of the transferred scrips in future, i.e., with reference to that obtaining on 4.4.2008, the transfer date, these were transferred to HTM category (from AFS category) to avoid future losses. This, it was explained, is a business decision, as signified by the Board resolution dated 4.4.2008. As regards the claim of the AFS category securities being 'stock-in-trade' of the bank, which was emphasized before us with reference to CBDT Instruction No. 17 of 2008 dated 26/11/2008 (PB pgs. 81-82 of CLC), so that it is liable to be valued on each valuation date, i.e., as at the end of each previous year, at cost or market value, whichever is less, the following information was supplied (by the ld. AR) vide Note dated 1.7.2016 (supra):

Sr. No.	Name of Security	Market value as on 31.3.2006 (Rs.)	Market value as on 31.3.2007 (Rs.)	Market value as on 31.3.2008 (Rs.)
1	6.01% GOI 2028	1,62,72,000	1,54,88,000	1,54,16,000
2	6.17% GOI 2023	1,70,04,000	1,63,38,000	1,62,56,000

The non-following of the valuation method aforesaid was sought to be justified in terms of the Board Instruction supra (para vii) as well as the RBI Master Circular supra (para 16), whereby though the HTF and AFS category securities are required to be marked to market, i.e., scrip-wise, the same is to be aggregated (for all the securities falling under a particular category), and while the net appreciation is to be ignored, the net depreciation provided for (through IDR account), without changing the book value of the individual securities. The same is adjusted on its subsequent sale or transfer to another category. For example (as cited in the Note) there are two securities, purchased at Rs.100/- each (acquisition cost), in the AFS category. At the

end of the relevant year, the first security appreciates to Rs.140/-, while the second depreciates to Rs.75/-. There is thus net appreciation of Rs.15/- (Rs.40 - Rs.25). There would be no depreciation reserve created, nor any corresponding debit to the P&L Account. Next year, on 4<sup>th</sup> April (say), the second security is transferred to HTM category. The shifting loss would be Rs.25/- (book value: Rs.100 – market value: Rs.75) to be taken to the P&L Account. The Id. CIT(A) after considering the assessee's case, held as under:

‘4.3 **Decision** :-

I have considered the facts of the case and the submissions made by the assessee.

4.3.1 It is necessary to examine the entries passed by the assessee in books of account, that is, P&L Account and Balance Sheet in this regard. It is observed from the records that (1) assessee has made a provision for "investment depreciation reserve" for Rs.24,05,000/- and debited the same to the P&L Account above the net profit of Rs.3,45,31,529/-, but has claimed the same as revenue deduction while computing the total income because the same was not added back to the business income in the computation of total income filed by the assessee and it stands allowed by the Assessing Officer also. This is in addition to the claim for additional deduction of Rs.80,99,100/- made by the assessee in the computation of total income, (2) opening balance of Rs.67,56,900/- in the "investment depreciation fund" account and part of the opening balance of Rs.8,25,100/- (55,26,000 - 47,00(900)) in the "investment fluctuation fund" account totaling Rs. 75,82,000/- were transferred/credited may be to "state loan bond & GOI securities" account which was reduced by Rs.96,87,546/- (4,92,478,138 - 48,27,90592) from the first day of the year to the last day of the financial year. It appears from the records that assessee has been debiting P&L Accounts with amounts towards provisions for "investment depreciation" and "investment fluctuations" *and these were claimed as deductions in the computations of total income and were allowed* which resulted in the building of opening balances of Rs.67,56,900/- and Rs.55,26,000/- as on first day of the financial year, that is, 01/04/2008 in the "investment depreciation fund" and "investment fluctuation fund" accounts respectively. Thus, there is some mis-match of figures, however, the assessee has made a claim for Rs.80,99,100/- and Assessing Officer has also adopted that figure and,

therefore, the discussion is restricted to the amount of Rs.80,99,100/- only. *Thus, allowing a further deduction for the same issue, that is, depreciation in value of securities does not arise in facts and in law.*

4.3.2 Basic issue in the appeal is whether deduction in respect of depreciation in respect of govt. securities which are held as "investments", as per RBI guidelines followed by the assessee and all other banks is allowable as a revenue deduction while computing the business income or not under the provisions of IT. Act, 1961. Banking business in the country is basically governed by Banking Regulation Act, Reserve Bank of India Act, and Negotiable Instruments Act and other applicable acts. Guidelines issued by RBI while administering Banking Regulation Act have to be strictly followed and, therefore, all the banks have to hold certain percentage of their deposits at the end of every weekend in govt. securities as investments to comply with statutory requirements of Banking Regulation Act. Banks can trade in these govt. securities held as investments and gains and losses from these securities have to be accounted for as trading gains and losses only as per RBI guidelines even though these govt. securities are held as investments in books because there is a continuous trade in govt. securities by the banks to meet with the statutory reserves account vis-a-vis the deposits available with the bank at the week end. Thus, even though the govt. securities have to be classified as "investments" in books of account by all the banks doing banking business in India, these are in essence items of stock in trade because of the fluctuating nature of its business of collecting deposits and advancing the same to the borrowers as per RBI guidelines. Even though apparently these appear as "investments" in the books of account of all the banks, including co-operative banks, these are nothing but items of stock-in-trade and have to be dealt with at par with normal business practices and provisions applicable to stock in trade as per accountancy principles and RBI guidelines. Fundamental principle of accountancy clearly states that stock in trade has to be valued at cost or market price, whichever is lower, and even if it is not followed in accounts, it has to be followed for Income Tax purposes unless otherwise stated by the assessee. In the case of the assessee, RBI guidelines have directed the banks to follow the same principle and provide for depreciation in books of account for depreciation in investments held in the form of govt. securities and the same has to be allowed as a deduction while computing the business income because since these govt. securities do not appear as stock-in-trade but as investments in its books of account

and, therefore, a corresponding entry by way of physical entry in books of account has to be provided and the same has been done by the assessee from year to year and claimed as deduction and allowed by the revenue also. *Thus, there is no scope for allowance of the same as a deduction in the computation of total income again especially when it has been done from year to year.* Therefore, assessee's claim for deduction of Rs.80,99,100/- is patently erroneous and a duplicate claim and the same is rejected in facts and in law. In this connection, though the *reliance placed by the assessee on the decisions is correct*, assessee's claim is rejected on facts since it is a duplicate claim which has already been allowed in earlier years and *allowed to the extent of Rs.24,05,000/- in the current assessment year also.* Therefore, the ground of appeal of the assessee is dismissed.'

[emphasis ours]

Aggrieved, the assessee is in appeal, raising the following grounds:

'2. The Ld.CIT(A) erred in confirming the disallowance of Rs.80,99,100/- made by the respondent JCIT, on account of investment loss on shifting of securities, even when there is no duplication of any claim.

3. The Ld. CIT(A) erred in confirming the disallowance on account of the investment loss even when the accounting treatment was in line with the guidelines laid down in RBI's Master Circular, and when such guidelines are to be followed as per CBDT's Instruction No. 17, dated 26.11.2008, and Circular No. 665, dated 05.10.1993.'

The Id. Departmental Representative (DR) would before us rely on the orders by the authorities below; taking us through both of them.

4. We have heard the parties, and perused the material on record.

4.1 It is plain from the reading of the impugned order (refer para 4.3.2), that the Revenue, admits that the securities held as stock-in-trade have to be valued at cost or market value, whichever is less, which is only an expression of one of the fundamental accounting principles of 'Prudence' – the other two being 'Substance over form' and 'Materiality', that govern accounting policies of an enterprise, since

statutorily mandated by Accounting Standard (AS)-I notified by CBDT u/s. 145(2) of the Act. This, in fact, is a fundamental accounting premise, judicially well-recognized (*Chainrup Sampatram vs. CIT* [1953] 24 ITR 481 (SC)). As explained therein, it is this method only that leads to disclosing true and correct profit or gain and, correspondingly, the true state of affairs. This, as the stock-in-trade, which is realizable in the ordinary course of trade by disposing in the market, cannot fetch more than its market value, which has declined below cost, so that loss to that extent has accrued. Though one could argue that this is valid only where accrual method of accounting is followed, the same (accrual) is itself a fundamental accounting assumption, also referred to in AS-I (supra) and, besides, banks follow mercantile system of accounting only.

The question therefore is if the investments under reference represent 'stock-in-trade' of the assessee-bank or are held as 'investments'. The assessee, with reference to the RBI Master Circular (para 15), clarified that all primary (urban) co-operative banks, as the assessee-bank, are required to classify their investment portfolio (SLR and non-SLR) under three categories, as under:

#### ‘15. CATEGORISATION OF INVESTMENTS

15.1 Primary (urban) co-operative banks are required to classify their entire investment portfolio (including SLR and non-SLR securities) under three categories viz.-

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

Banks should decide the category of the investment at the time of acquisition and the decision should be recorded on the investment proposals.’

While the HTM and HFT securities are, by definition, securities that are required to be held up to maturity and with an intent to trade, respectively, AFS category securities are that which do not fall under either of the said categories (refer

para 15 of the Master Circular). Presumably, then, the same could be held either as an 'investment' or as 'stock-in-trade'. We say so as any investment (capital asset) could also be sold at any time and, further, being not a HTM security, is not to be necessarily held up to maturity. It is the intent with which acquired that is decisive. It is, thus, *essentially a matter of fact*, to be determined by the AO, even as clarified by the Board per its Circular No. 665 dated 5.10.1993 (pgs. 79- 80 of CLC), issued following the decision in *Vijaya Bank Ltd. vs. CIT* [1991] 187 ITR 541 (SC), explaining it. The assessee in the present case contends to hold the AFS securities, to which category the securities transferred fall, as stock-in-trade, marking them to market on each valuation date, in terms of the RBI Master Circular (*supra*), also placing reliance on CBDT Instruction No. 17/2008 dated 26/11/2008 (para viii), the relevant part of which reads as under: (pg. 82/CLC)

'(vii) As per RBI guidelines dated 16th October 2000, the investment portfolio of the banks is ..... *In the case of HFT and AFS securities forming stock in trade of the bank*, the depreciation / appreciation is to be aggregated scrip wise and only net depreciation, if any, is required to be provided for in the accounts. The latest guidelines of the RBI may be referred to for allowing any such claims.'

(emphasis, ours)

The profit on the sale of HFT and AFS securities, however, is to be taken to the P & L Account. By all available accounts, then, the impugned securities, falling under the AFS category, are the assessee's stock-in-trade, even as the Revenue has issued no definite findings in the matter, which it ought to have. We therefore proceed on that basis.

4.2 The assessee, by providing for and claiming net deprecation in terms of the RBI Circular, has claimed depreciation on each security comprising (AFS) investment portfolio. That the same stands set off, wholly or partly, as the case may be, against appreciation on other securities in the portfolio, would only make it a case for

claiming the appreciated value (to the extent set off, as the net appreciation is to be ignored) as the book value for reckoning the profit or gain on its transfer. This may be demonstrated by taking the example of the two securities as cited by the assessee vide its Note (supra):

(Amt in Rs.)

Sr. No.	Particulars	Cost	Market Value (VD)	Book Value (*)
1	Security A	100	75	75
2	Security B	100	140	125
	Total	200	215	200

(VD) - Valuation date

(\*) - (assumed)

This is clearly a convulsion or a distortion of the simple method of valuing each item of stock-in-trade at its' cost or market value, whichever is less. Security B having appreciated, the same would require being valued at Rs.100/-, resulting in a depreciation at Rs.25/-, i.e., only *qua* Security A. Besides, the method followed would lead to further problems in assigning book values where there are a number of securities in the portfolio. The assessee can neither be said to be valuing its stock-in-trade (AFS securities) at 'cost' or at 'cost and market value, whichever is less'. It is not shown that the valuation of the securities under reference, being carried at acquisition cost, was disturbed on account of or by, as claimed, claiming net depreciation, and ignoring net appreciation (of the aggregate valuation of all the AFS category securities). Change of book value stands in fact proscribed by the RBI guidelines, being avowedly followed, and scrupulously. The cited example (at para 3) also affirms this. The only reasonable and possible interpretation of the assessee's claim of net depreciation (thro' IDR A/c), which stands allowed from year to year in computing its' assessable income, is of claim of depreciation – on the securities depreciated, to some extent, without altering their book values. The Revenue's contention of the assessee, by claiming depreciation for the current year with reference to the book value, which remains unchanged, is thus partly valid in-as-much

as there is a double claim (of depreciation) to that extent, as at Rs.10/- (say) *qua* Security A (in our example) where the appreciation in Security B is, instead, at Rs.15/-. The objection by the Id. CIT(A) in this regard is thus valid.

4.3 The foregoing apart, in our view, the assessee's claim is even otherwise not valid. The stock-in-trade as at each valuation date is to be valued at cost or market value, whichever is less. It is only after 4.4.2008 - the transfer date - that the securities, since transferred to HTM category, are liable not to be marked to market, and shall continue to be valued at the lower of the cost or market value as on the date of transfer (4.4.2008). The transfer being at market value, the assessee is eligible to claim the loss, if any, in the fall in the value of its stock-in-trade since the last valuation date in-as-much as the market value as on the transfer date shall substitute the acquisition cost. The data supplied by the assessee in this regard is as under:

(Amt in Rs. lacs)

Scrip	Face value	Book value (cost)	Market value (as on 31.3.2008)	Market value (as on transfer date)
6.01% GOI 2028	200	206.60	154.16	154.58
6.17% GOI 2023	200	207.60	162.56	163.80
Total	400	414.20	316.72	318.38

(refer para 4 of the written Note dated 01.7.2016)

With reference to their carrying value, i.e., cost or market value, whichever is less, there is in fact an increase in the market value of both the securities transferred (for the current year). Accordingly, we are unable to see as to how, in the admitted facts of the case, any loss arises to the assessee on the said shifting, i.e., for the year under reference? This was in fact put across to the Id. AR during hearing, who only stated of the securities having been valued as per the RBI guidelines. It is trite law that each year is a separate and independent unit of assessment, for which year alone, income, as assessable for that year, is to be brought to tax. Valuation of stock-in-trade is an important component of determining real income. As explained in *CIT vs.*

*British Paints India Ltd.* [1991] 188 ITR 44 (SC), the stock-in-trade, both at the beginning and the end of the year, is to be properly valued following the standard, accepted principles of commercial accounting, to arrive at the true and correct profit for the year. *Not so doing would lead to a distorted figure of income.* In its words, which find reproduction in *United Commercial Bank vs. CIT* [1990] 240 ITR 355 (SC), relied upon by the assessee: (at pg. 365)

"It is a well-recognised principle of commercial accounting to enter in the P&L a/c the value of the stock-in-trade at the beginning and at the end of the accounting year at cost or market price, whichever is the lower." (pg. 51)

This is followed by further reproduction (at page 365), dilating on this aspect, which is relevant from the stand point of the present case, as under:

"Where the market value has fallen before the date of valuation and, on that date, the market value of the article is less than its actual cost, the assessee is entitled to value the articles at market value and thus anticipate the loss which he will probably incur at the time of the sale of the goods. Valuation of the stock-in-trade at cost or market value, whichever is the lower, is a matter entirely within the discretion of the assessee. But whichever method he adopts, *it should disclose a true picture of his profits and gains.* If, on the other hand, he adopts a system which does not disclose the true state of affairs for the determination of tax, even if it is ideally suited for other purposes of his business, such as the creation of a reserve, declaration of dividends, planning and the like, *it is the duty of the AO to adopt any such computation as he deems appropriate for the proper determination of the true income of the assessee.* This is not only a right but a duty that is placed on the officer, in terms of the first proviso to s. 145, which concerns a correct and complete account but which in the opinion of the officer, does not disclose the true and proper income." (pg.52)

The Assessing Officer's objection to the assessee's method of accounting as not disclosing true results (refer pg. 5 of the assessment order) is thus correct, and the assessee's alluding to the RBI guidelines would be therefore of no moment. *How could, one may ask, appreciation in one security be adjusted against depreciation in*

*another to arrive at the net appreciation?* Each security constitutes a separate item of stock-in-trade, and is to be accordingly valued independently, applying the conservatism principle of ‘cost or market value, whichever is less’, and which, therefore, cannot be applied on an aggregate basis. Why, the assessee could sell/trade in, or transfer (to investment category), any security independent of any other. The said guidelines, i.e., even assuming their relevance, are thus also inconsistent with the well accepted principles of commercial accounting, which form the cornerstone for determining income under the Act, and have found endorsement, time and again, by the Hon’ble Apex Court. In the facts of that case (*British Paints India Ltd.* (supra)), the assessee-company, engaged in the manufacture and sale of paints, had, as a consistent practice, valued its goods-in-process and finished goods at cost of raw materials, totally excluding overhead expenditure. The Income Tax Officer was of the view that there was no justification to recognize the practice of valuing stock otherwise than in accordance with the well recognized principle of accounting which required the stock to be valued at cost (viz. raw material plus expenditure) or market price, whichever is lower. *He, therefore, calculated the value of the opening and the closing stock by adding the overhead expenditure, computing the assessee’s income accordingly.* This was upheld by the Hon’ble Apex Court, holding that the *object of the stock valuation is the correct determination of the profits or loss resulting from a year’s trading. It is the true results of the trading activity of that year that must be disclosed by the books* (pg. 55). Repelling the argument of a consistent practice, it held as under:

‘It is not only the right, but the duty of the Assessing Officer to consider whether or not the books disclose the true state of accounts and the correct income can be deduced therefrom. It is incorrect to say, as contended on behalf of the assessee, that the Officer is bound to accept the system of accounting regularly employed by the assessee, the correctness of which had not been questioned in the past. There is no estoppel in these matters, and the Officer is not bound by the method followed in the earlier years.’ (pg. 53)

In fact, a close reading of the RBI Circular supra reveals that it regards the various categories as only investment categories, i.e., as investments. However, being available for sale (AFS) or held for trading (HFT), the controlling bank advocates the banks to provide for the net depreciation on these securities, while ignoring the net appreciation. This is done through the IDR a/c and the (book) value of the individual securities is not altered. This also explains as to why the assessee-bank continues to value the securities under reference at cost, i.e., despite a decline in their market values with reference to the said cost. IDR is thus only a provision and not a valuation method (also refer para 17.8 of the Master Circular). We have in fact already expressed that the method adopted by the assessee does not result in determining correct income, which is, as explained, the mandate of law. The mandatory application of the RBI guidelines, for the purpose of preparing and presenting accounts of the constituent banks notwithstanding, the same cannot override or supplant either the established principles of commercial accounting, since statutorily recognized, besides having judicial sanction, or the express provisions of law. This, in fact, is the ratio of the decision in *United Commercial Bank* (supra), wherein the assessee-bank was held eligible for its income, despite different treatment in books following RBI guidelines, being determined by valuing its stock-in-trade at cost or market value, whichever is less. The said decision, relied upon by the assessee, impacts it adversely in the present case in-as-much as it has been returning income, rather than by following the said principle, the RBI prescription, which is contended to have been scrupulously followed and guided the preparation of its' accounts. This is also the ratio of the decisions, *inter alia*, in *Southern Technologies Ltd vs. CIT* [2010] 320 ITR 577 (SC) and *New India Industries Ltd. vs. CIT (Asst.)* [2000] 18 SOT 51 (Del) (SB) (the latter referred to in *State Bank of Mysore vs. CIT (Dy.)* [2009] 33 SOT 7 (Bang), relied upon by the assessee). Thus, despite our agreement with the proposition of loss on conversion of its securities from AFS to HTM category being deductible – the bank thereby converting its stock-in-trade into a capital asset, a

proposition which has found acceptance in many a decision – the assessee citing a few, we find no scope for the application of the same in the present case in-as-much as no such loss arises on such conversion. Even if therefore the assessee is able to show that IDR is also a valuation method, even though incorrect, no claim with reference to the impugned securities arises for the current year. In fact, for such a claim to be made, the depreciation, to the extent realized on the sale/transfer of securities, is to be written back by credit to the P&L Account, which works to Rs.66 lacs (Rs.316.72 lacs – Rs.318.38 lacs/refer para 4.3), and which has clearly not been. The proposition of the deductibility of the said loss, with which we principally agree and is even otherwise binding, having been upheld in *HDFC Bank Ltd.* (supra), relied upon, *inter alia*, notwithstanding, would be of no consequence in the facts of the case.

4.4 Reference to the IDR incidentally brings another aspect of the matter to the fore, to which we may, without prejudice, also advert. As afore-stated, and as also explained at length during hearing, IDR account is a provision for depreciation on investments, as where there is a net depreciation (on marking the securities to market), which is charged to the P&L account. This provision is being regularly allowed in the assessee's tax assessments. To the extent, therefore, the IDR balance comprises net depreciation, so provided, on the securities under reference, there would be, where so, as also afore-stated, double deduction in the impugned claim of Rs.80.991 lacs. This would though be required to be verified/ascertained; the Id. AR before us stating that the scrip-wise break-up of IDR is available. The debit of the total decline in the realizable (market) value, i.e., with reference to the cost of acquisition (book value), Rs.95.82 lacs, to the IDR account, reduces its balance to nil. The said debit being met by a transfer of Rs.80.991 lacs from IFF account, there is thus a reduction in that (latter) account by that sum. It is, therefore, wrong to say that the decline is met by transfers from IDR A/c (refer para 3), and it is only by debit to (i.e., transfer from) IFF A/c. A recoupment, to whatever extent, in value, on sale (realization) of the securities

– now categorized as HTM securities, being quoted below par, shall stand to be credited to the IFF account, which though shall not stand to form part of the banks' Tier-II capital in-as-much as it shall not be a gain realized on sale of HFT or AFS security, but only HTM security (refer para 17 of the Master Circular supra). The bank has thus utilized its capital to fund the loss in value of its' AFS securities, net depreciation on which is even otherwise being provided in terms of the RBI guidelines. What business purpose the said utilization serves, we are unable to understand, nor could be explained to us by the Id. counsel, apart from stating it to be a business decision. We state so as the shift (in category) is to necessarily serve a business purpose for it to be a deductible loss, and the same cannot merely be a device to save tax. As argued by the Id. DR with reference to the decision in *CIT vs. Abdullabhai Abdulkadar* [1960] 41 ITR 545 (SC), a loss becomes allowable only where it springs directly from and is incidental to the *business of the assessee*. True, the shift is permissible under the RBI guidelines, but being available for sale, so that it could be sold or, as the case may be, held till such time as considered proper by the assessee, including up to maturity, the shift has no revenue impact as such, and its' business purpose remains, to our mind, unexplained, and which would therefore warrant explanation, with the Revenue doubting this aspect as well. Whether the future price of the transferred securities stands to fall, as stated, or even rise (simultaneously stated at para 2 of the same Note dated 1/7/2016), the shifting (of category) would make no difference. Rather, in case of future fall in price, the bank shall be stuck with the (HTM) security/s, which is otherwise liable to be sold, containing the loss. The assessee is, rather, independent of its' accounting treatment, eligible to claim the loss in the (market) value of the AFS securities from year to year, i.e., per its computation of income. Is it, therefore, that it discovers of standing to gain by claiming a tax break *qua* the said loss on the said shift (to the HTM category). We may though clarify that we, by saying so, issue no definite findings in the matter, but only that, our order being appealable, where the appeal against it is upheld on the

principal reason of no loss arising during the year, the same may require being restored to the file of the assessing authority for determining the said business purpose, if any, as well as the extent of duplication in the claim.

4.5 The foregoing decides Gds. 2 and 3; Gd. 1 being not pressed before us, so that it is dismissed as not pressed, as are Gds. 2 and 3, albeit on merits.

5. Gd.4 agitates the addition in the sum of Rs.2.18 lacs on account of unexplained expenditure on 'Furniture and Fixture'. The AO observed the assessee to have claimed purchase of furniture and fixture during the year at Rs.68.133 lacs, of which Rs.61.250 lacs stood reflected under the head 'Land & Building' (under the subhead 'Renovation'), so that there was a net addition of Rs.60,52,091/- during the year. The depreciation chart, however, reflected an addition of only Rs.58,34,182/- (PB pg. 15). The difference of Rs.2,17,909/- was, accordingly, added as unexplained expenditure, and stood confirmed for the same reason, i.e., for want of reconciliation, so that, aggrieved, the assessee is in second appeal.

6. We have heard the parties, and perused the material on record. We find little basis for the addition. If the total addition under the account head 'Furniture and Fixture' is Rs.60.52 lacs (net of renovation expenses), the entire expenditure stands reflected in the books, so that no part of it can be considered as unexplained. If, on the other hand, it is not so, and the assessee has wrongly claimed depreciation on a higher sum per the depreciation chart, the depreciation claim would require being revised. The point is: *What is the basis of the assessee's claim for this higher sum?* And *qua* which we find no basis. The matter is restored to the file of the A.O. for determination and decision consistent with his findings. We decide accordingly.

7. As regards Gd.5, the assessee claiming depreciation on computers with reference to the purchases made during the year - at Rs.38.03 lacs, could, however,

furnish details only for Rs.33.92 lacs. The A.O. accordingly allowed depreciation with reference to the lower sum, resulting in the impugned disallowance of Rs.2,46,335/-, which found favour with the Id. CIT(A) for the same reason.

8. We have heard the parties, and perused the material on record. Before us, the Id. AR admitted that the assessee could not furnish bills to the extent of Rs.4.11 lacs. However, in view of the some of the said purchases being in the second half of the year, the depreciation impact of the same for the year would only be Rs.1,88,496/- (and not Rs.2,46,335/-). The explanation is reasonable. Subject to the verification by the A.O., we allow the assessee's claim. We decide accordingly.

9. In the result, the assessee's appeal is partly allowed and partly allowed for statistical purposes.

*Order pronounced in the open court on October 24, 2016*

Sd/-  
(Amarjit Singh)

न्यायिक सदस्य / Judicial Member

Sd/-  
(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 24.10.2016

व.नि.स./Roshani, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

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