

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'जी', मुंबई।

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCHES, 'G' MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Manoj Kumar Aggarwal, Accountant Member**

**ITA No.7224/Mum/2014
Assessment Year: 2010-11**

Income Tax Officer, Ward-1(3), 1 st Floor, Mohan Plaza, Wayale Nagar, Khadakpada, Kalyan	बनाम/ Vs.	M/s Nagrik Sahakari Bank Ltd. H. No.27, Prabhu Ali, Opp. Bank of India, Bhiwani, Maharashtra-421302
(राजस्व /Revenue)		(निर्धारिती /Assessee)
PAN. No. AAAAN0638A		

राजस्व की ओर से / Revenue by	Miss Anupama Singla-DR
निर्धारिती की ओर से / Assessee by	Shri Sunil Makhija

सुनवाई की तारीख / Date of Hearing :	24/01/2017
आदेश की तारीख /Date of Order:	27/01/2017

आदेश / O R D E R

Per Joginder Singh(Judicial Member)

The Revenue is aggrieved by the impugned order dated 21/08/2014 of the Ld. First Appellate Authority, Mumbai. The only ground raised in the present appeal pertains to deleting the addition of Rs.51,11,957/- on account of amortization of premium on government securities in HTM category.

2. During hearing, the ld. DR, Miss. Anupama Singla, defended the addition made by the Assessing Officer by contending that while deleting the addition, the Ld. Commissioner of Income Tax (Appeal) did not appreciate the facts in right perspective.

2.1. On the other hand, Shri Sunil Makhija, ld. counsel for the assessee, defended the impugned order by contending that the impugned issue is covered in favour of the assessee by the decision of the Tribunal for Assessment Year 2006-07 (ITA No.2964/Mum/2012) order dated 15/04/2016. This factual assertion of the assessee was not controverted by the Revenue.

2.2. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion from order of the Tribunal dated 15/04/2016 for ready reference and analysis:-

“1. The present appeal is filed by revenue against the order of CIT appeal dated 24 January 2012 in respect of AYs 2006 – 07. The revenue has raised only one issue/ ground that CIT(A) erred in holding that the premium paid by assessee for purchase of securities/bonds is revenue expenditure, ignoring the fact that the premium has been paid for purchase of securities/bonds which are appearing in the balance-sheet as capital assets and therefore payment made in connection with purchase of capital assets cannot be treated as revenue expenditure.

2. The brief facts of the case are that assessee is Co-operative Bank. The assessee filed return of income for relevant assessment year or 8th May 2007, declaring total business loss at Rs. 64,89,699/-. The case was selected for scrutiny. While making assessment, AO observed that during the year under consideration, the assessee has brought certain investment at premium. A part of the premium amounting to Rs. 42,94,695/-, was written off in the income and expenditure account. As the premium was paid on the investments which are of the assets of the Bank and the expenses incurred for acquiring both the assets are capital expenses in nature. The assessee was asked to explain as to why this amount debited to the P&L and account as “premium written off” should not be disallowed and be added to the total income as the same is not to revenue expenditure. The assessee submitted its reply and contended that as per rules, regulations and guidelines issued by RBI, the assessee are allowed to make investments be not treated as capital expenditure as against deferred revenue expenditure as claimed by it in the income of return filed. It was further contended that being a Cooperative Bank, the assessee is allowed to make investments only in particular securities/ bonds approved by RBI. To comply with the rules and regulation and to maximise out profit and make investment the assessee selected the best yield given securities/bonds. The bonds and securities which were purchased have already been issued and admittedly in the market are available at higher price than face value. The difference in face value and the market value is paid in connection with acquiring an income yielding asset which is approved security by RBI and therefore is clearly an allowable expenditure against the income earned. By making investment in the said securities / bonds the assessee gets income and no new asset has come into existence. The contention of assessee was not accepted by the AO. The AO concluded that the amount paid is toward acquiring assets and the nature of payment is nothing but capital in nature and the same cannot be treated as revenue expenditure. And the amount of Rs. 42,94,695/- written off on account of premium paid toward acquiring the securities/ bonds

(investment) was disallowed and added back to the total income of the assessee in the assessment order.

3. Aggrieved by the order of AO, the assessee filed appeal before CIT(A). CIT(A) after considering the fact and submission of assessee deleted the disallowance / addition and allowed the appeal of the assessee. Aggrieved by the order of CIT(A) the revenue has filed the present appeal before us.

4. We have heard the Ld. DR for the revenue and Ld. AR for assessee and perused the material available on record. Ld DR for revenue argued that CIT (A) wrongly deleted the addition/ disallowance made by AO by treating it as revenue expenditure. DR for revenue further argued that order of CIT (A) be reversed and order of AO may be upheld. On the other hand, AR for assessee argued that CIT (A) has considered the facts of present case in correct perspective and deleted the disallowance. We have considered the rival contention of the parties and given careful consideration to the orders of authorities below. CIT(A) while passing the order gave its finding on the following manner:

“I have carefully considered the assessment order and the submission of the appellant. I find that the AO has not considered the prudential norms prescribed by the Reserve Bank of India and has also not considered the CBDT circular number 665 dated 05 October, 1993, which has specifically been issued to enable the AO to complete the assessment of the bank by considering the circulars and guidelines issued by reserve bank of India, from time to time. The AO has also not considered the fact that government securities are purchased by the appellant co-operative bank to comply with the statutory liquidity ratio (SLR) requirement with the bank has to maintain at any cost in order to carry out its business of banking. The nonmaintenance of SLR by the bank can have serious ramifications on the very existence and continuance of business of banking of the appellant co-operative bank. Also, the premium on the purchase of security is placed by the bank at different points of time depending upon the prevailing interest rate resign in the financial system of the country and the other available avenues of investment and the requirement of maintaining the SLR. The main object of the appellant co-operative bank while purchasing the government security (under HTM category) and paying premium on such securities over and above its face value is to maintain SLR. A bank has to repay the monies and deposits accepted by it on demand to its account holder and deposit holders and for that reason, it has to maintain CRR and SLR as per stipulations of RBI. Such obligation of repayment on demand to its depositors is not there for NBC's, PFC's and IDCs.

4.1 in view of the above facts and the judicial decisions on the subject matter, I take the view that, the amortisation of premium paid on purchase

of securities classified under the HTM category is an ascertained and determined loss for the bank and at the same is not expressly disallowed by any provisions of income tax act 1961, the same has to be allowed while computing the business income of the appellant bank. Moreover, the interest income of these securities is regularly shown by the appellant and hence as per the matching principle, the deduction of premium expenses is allowable. Further, the securities purchased by the appellant co-operative bank and classified under the category 'held to maturity' do form part of "stock in trade" of the appellant co-operative bank, because the same are purchased with an predominant motive of maintaining SLR of the bank, non-maintenance of which can have serious ramifications on the very existence of business of banking. There is no dispute about the quantum of loss. The disallowance is, therefore, unwarranted. Accordingly, both the substantive grounds stand allowed."

5. We may note that the assessee is a Co-operative Bank and has to follow certain statutory obligation prescribed by RBI from time to time. And to meet one of the important obligations of payment/ repayment on demand, every bank has to maintain cash reserve ratio (CRR) and statutory liquidity ratio (SLR) as prescribed by RBI. The SLR is maintained by the bank by investing the funds in Government Securities. The assessee had paid the premium on purchase of such Government securities. We may further note that the amortization of premium paid on purchase of securities classified under the category held to maturity as per the circular of RBI, is akin to diminution in the value of investment. The assessee who is co-operative bank is allowed only to make investment in particular securities/bonds approved by RBI and that the assessee has acquired the securities(s) bond at a premium does not change the character of the expenditure. The assessee has written off only a portion of premium paid for acquiring the investment and not the face value, which according to AO proves that even assessee is aware that whatever expenditure is incurred has been acquired has been spent on acquiring assets which is capital in nature. We have seen that all the facts, including the guidelines of RBI and the circular of CBDT dated 05 October, 1993, which has specifically been issued to enable the AO to complete the assessment of the bank by considering the circulars and guidelines issued by reserve bank of India, from time to time were considered by the CIT(A) and given conclusive finding of fact holding that securities purchased by the assessee bank under the category held to maturity formed part of stock in trade of the assessee bank as the same are purchased with an predominant motive of maintaining SLR of the bank, non-maintenance of which can have serious ramifications on the existence of banking business and deleted the disallowance made by AO. The order of

CIT(A) is reasoned one and does not require any interference at our end, thus the appeal of revenue is dismissed.

6. In the result, appeal filed by revenue is dismissed.”

2.3. We find that the cooperative bank has to follow certain statutory obligations, prescribed by RBI, from time to time. To meet out the important obligation of payment/repayment, on demand, every bank has to maintained Cash Reserves Ratio (CRR) and Statutory Liquidity Ratio (SLR) has prescribed by RBI. The SLR was maintained by the bank by investing the funds in government securities. The assessee paid the premium on purchase of such government securities. The amortization of premium paid on purchase of security, classified under the category held to be maturity as per circular of RBI is akin to diminution in the value of investment. The assessee, being cooperative bank, is allowed to make investment in particular securities/bonds, proved by RBI and the assessee has acquired the securities bonds at a premium, which does not change the character of expenditure. In the present Assessment Year, the assessee had written off an amount of Rs.51,11,957/- on account of amortization of premium on government securities. The stand of the Revenue is that as the premium has been paid on investment, which were reflected as 'assets' in the balance sheet of the assessee, the expenses incurred are in the nature of capital expenditure. In response to the query of the Ld. Assessing Officer, the assessee filed submissions, which have been reproduced at

page-3 of the impugned order. However, the Ld. Assessing Officer held that the impugned amount is a capital expenditure. On appeal before the Ld. Commissioner of Income Tax (Appeal), the factual matrix along with various case laws like Uco Bank vs CIT 240 ITR 355 (SC), CIT vs Bank of Baroda 262 ITR 334 (Bom.), CIT vs City Union Bank Ltd. (2007) 291 ITR 144 (Mad.) and CIT vs Karur Vysya Bank Ltd. 273 ITR 510 (Mad.), etc. were considered and following the decision in the case of the assessee for Assessment Year 2009-10 held that the amount written off by the assessee as 'amortization of premium on government securities' in 'HTM' category was an allowable expenditure. Since, the issue is covered in favour of the assessee that too in the case of assessee itself, therefore, in the absence of any contrary decision, we affirm the stand of the Ld. Commissioner of Income Tax (Appeal) as the issue has been dealt with in a justifiable manner, resulting into dismissal of appeal of the Revenue.

Finally, the appeal of the Revenue is dismissed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 24/01/2017.

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 27/01/2017

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Shekhar, P.S./नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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