

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "जी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE S/SHRI B.R.BASKARAN, AM AND AMARJIT SINGH, JM

आयकर अपील सं./I.T.A. No.3357/Mum/2013
(निर्धारण वर्ष / Assessment Year:2008-09)

Yes Bank Limited, 9 th floor, Nehru Centre, Discovery of India Building, Dr.A B Road, Worli, Mumbai- 400018	बनाम/ Vs.	Addl.Commissioner of Income Tax 7(3), Room No.614, 6th floor, Aayakar Bhavan, M K Road, Mumbai-400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A. No.3388/Mum/2013
(निर्धारण वर्ष / Assessment Year:2008-09)

Dy.Commissioner of Income Tax 7(3), Room No.615, 6th floor, Aayakar Bhavan, M K Road, Mumbai-400020	बनाम/ Vs.	Yes Bank Limited, 9 th floor, Nehru Centre, Discovery of India Building, Dr.A B Road, Worli, Mumbai-400018
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN. :AAACY2068D

अपीलार्थी ओर से / Assessee by	S/Shri Yogesh Thar and Deepak Jain
प्रत्यर्थी की ओर से/ Revenue by	Shri K Krishna Murty

सुनवाई की तारीख / Date of Hearing : 29.12.2015

घोषणा की तारीख /Date of Pronouncement:1.1.2016

आदेश / O R D E R

Per B R Baskaran, AM:

These cross appeals are directed against the order dated 27-02-2013 passed by Ld CIT(A)-13, Mumbai and they relate to the assessment year 2008-09.

2. The assessee is carrying on banking business. The first issue urged in the appeal of the assessee relates to the disallowance made u/s 14A of the Act. The Ld A.R submitted that the disallowance u/s 14A is not warranted in this case since

- (a) the assessee has not received any exempted income.
- (b) the securities are held as stock in trade.
- (c) the non-interest bearing funds held by the assessee are more than the value of tax free investments.

In support of the above said propositions, the Ld A.R placed reliance on host of case laws.

3. On the contrary, the Ld D.R submitted that the disallowance of administrative expenses under Rule 8D(2)(iii) is required to be made even if the interest free funds have been used for making investments. In this regard, he placed reliance on the following case law:-

- (a) Escorts Ltd (102 TTJ 522)
- (b) Southern Petro chemical industries (93 TTJ 161)
- (c) Smt. Leena Ramachandran (339 ITR 293)(Ker).

4. We heard the rival contentions on this issue and perused the record. We agree with the contention of the assessee that no disallowance under Rule 8D(2)(i) and (ii) is required to be made, if the non- interest bearing funds available with the assessee are more than the amount of investment which generate tax free income, since the said view has been upheld by the Hon'ble Bombay High Court in the case of CIT V/s HDFC BANK LTD. [2014] 366 ITR 505 (Bom). However, the fund position of the assessee is required to be examined at the end of the AO. Accordingly, we set aside the order of Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine this issue by following the ratio rendered in the case of HDFC Bank Ltd (supra) and also any other decision that may

be relied upon by the assessee and take appropriate decision in accordance with the law.

5. With regard to the expenditure which requires to be disallowed under Rule 8D (2)(iii), the Id.AR submitted that there is no requirement to make any disallowance during the year under consideration, since the assessee has not received any exempt income. However, when it was pointed out that the assessee would have spent some portion of expenses for the purpose of purchase, maintenance and sale of investments and hence a portion of administrative expenses is required to be disallowed even if no dividend income is received, the Id. AR agreed that the said disallowance may be restricted to Rs.5,93,655/- as computed by the assessee before the tax authorities.

6. We find merit in the said submissions, since the object of the assessee in making investment is to hold them as stock-in-trade. Accordingly, we are of the view that the methodology prescribed under Rule 8D(2)(iii) cannot be applied to the facts and circumstances of the instant case. Accordingly, we modify the order of the Id. CIT(A) and direct the AO to restrict the addition under Rule 8D(2)(iii) to Rs.5,93,655/-.

7. The next issue urged by the assessee relates to deduction of Rs.3.28 crs. claimed under section 35D of the Act. The Id.AR fairly admitted that an identical issue has been decided against the assessee by the Co-ordinate Bench of the Tribunal, vide its order dated 30.9.2015 passed in the assessee's own case in ITA No.4270/Mum/2013 relating to assessment year 2006-07. Following the said decision of the Tribunal, we uphold the order of Id.CIT(A) on this issue.

8. The only issue urged in the appeal of the Revenue relates to disallowance of claim of loss of Rs.13.31 crores arising on account of re-

valuation of securities. The said disallowance was deleted by the Id. CIT(A) by following the decision rendered by him on identical issue in the assessment year 2006-07. The Id.AR pointed out that the co-ordinate Bench of the Tribunal has considered an identical issue in the assessment year 2006-07 in ITA No.5833/Mum/2012 and the decision of the Id. CIT(A) has been upheld by the Tribunal.

9. We have gone through the order dated 21.1.2015 passed by the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2006-07 passed in ITA No.5833/Mum/2012 and we notice that the Tribunal has followed the following decisions and held that loss on arising on re-valuation of securities is required to be allowed :

- a) United Commercial Bank V/s CIT (240 ITR 355)(SC);
- b) CIT V/s Bank of Baroda (262 ITR 334)(Bom); and
- c) CIT V/s HDFC Bank Ltd IT A No.330 of 2012 (Bom).

In view of the above decisions rendered by the Hon'ble Bombay High Court in the cases referred above, we uphold the order of Id.CIT(A) on this issue.

10. In the result, the appeal of the assessee is treated as partly allowed and appeal of the revenue is dismissed.

Pronounced accordingly on 1st Jan, 2016.

घोषणा खुले न्यायालय में दिनांक: 1st Jan, 2016 को की गई ।

Sd
(AMARJIT SINGH)
JUDICIAL MEMBER

sd
(B.R. BASKARAN)
ACCOUNTANT MEMBER

मुंबई Mumbai: 1st Jan, 2016.

व.नि.स./SRL, 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)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

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