IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

INCOME TAX APPEAL NO.55 OF 2014

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.
...APPELLANT

VERSUS

M/s. Maharashtra Godavari Gramin
Bank Ltd., Plot No.356, Jeevan Shri,
Sector Go, Town Centre, Aurangabad.
...RESPONDENT

...
Mr.Alok Sharma, Standing Counsel for Appellant.
Mr.S.V. Adwant Advocate for Respondent.
...

CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.

DATE : 27TH MARCH, 2015

ORAL ORDER :

1. Mr. Sharma, the learned counsel for the Appellant strenuously submits that the Tribunal committed error upholding the order of the Commissioner (Appeals). The Assessing Officer has

rightly considered the aspect of amortization of premium on the Government Securities in the category of "Held To Maturity". The Commissioner (Appeals) and Tribunal committed error in deleting the said addition on account of amortization of premium on the Government Securities. According to the learned counsel, the said Government Security is not a stock in trade and the same would tantamount to a capital asset. This aspect has not been considered. Learned counsel further submits that the provisions of the Income Tax Act will prevail over the Reserve Bank of India Circular.

2. Mr. Adwant, the learned counsel for Respondent submits that the security held till maturity is a stock in trade. Learned counsel relies o**n the Judgment of Kerala High Court in a case of CIT Vs. Nedungadi Bank Ltd., reported in (2003) 264 ITR 0545,** wherein it is held that even the security held till maturity would amount to stock in trade. Learned counsel further submits

that aspect in respect of amortization of premium has been considered by the Division Bench of this Court in a case of **Commissioner of Income Tax-2, Mumbai 400 020 vs. HDFC Bank Ltd., reported in 2014 C.J. (Bom) 345.**

3. We have considered the submissions canvassed by the respective parties. The Division Bench of this Court **Commissioner of Income Tax-2, Mumbai 400 020 vs. HDFC Bank Ltd.**, referred supra, has observed in Para 7 thus:-

> "7. As far as question (C) is concerned, we find that an identical question of law was framed and answered in favour of the Assessee by this Court in its judgment dated 4th July, 2014 in Income Tax Appeal No.1079 of 2012, Commissioner of Income Tax-2 v/s M/s Lord Krishna Bank Ltd. (now merged with HDFC Bank Ltd.). Mr. Suresh Kumar fairly stated that question (C) reproduced above is covered by the said order. In view thereof, we are of the view that even question (C) does not raise any substantial question of law that requires an answer from us."

. Question (C) framed by the Division Bench of this Court in the case of **Commissioner of Income Tax-2 vs. HDFC Bank Ltd.** referred supra, was as under:-

> "(C) Whether the ITAT is right in law in holding that the assessee is entitled for deduction with respect to the diminution in value of the investment and amortization of premium on investment held to maturity on the ground of mandate by RBI guidelines thereby ignoring the decision of the Supreme Court in the case of Southern Technologies vs. CIT (320 ITR 577) ?"

4. Considering the aforesaid aspects of the matter, no substantial question of law arises. The Appeal, as such dismissed. No costs.

[A.I.S.CHEEMA,J.] **[S.V.GANGAPURWALA,J.]**

asb/MAR15