IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 39 OF 2014

The Commissioner of Income Tax, Aurangabad ...Appellant

versus

M/s. Gajanan Nagari Sahakari Bank Ltd. ...Respondent

…..

Mr. Alok Sharma, Advocate for the appellant
Mr. R.R. Chandak, Advocate for the respondent

.....

**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 7th JANUARY, 2015

P.C. :-

1. This appeal challenges the concurrent findings recorded by the Commissioner Income Tax (Appeals) and the Income Tax Appellate Tribunal, holding that the respondent was entitled to the amount deducted on account of depreciation of security held as an investment in Government security.

2. The respondent is a Co-operative Bank. The respondent had filed Income Tax Returns for the assessment year 2009-10 declaring total loss of Rs.27,51,096/-. The Assessing Officer debited an amount of Rs.81,67,500/- towards depreciation on investment on the

Government securities held under the category of “HELD TO MATURITY”. In the opinion of the Assessing Officer, the securities held under the “HTM” category are in the nature of capital assets and therefore, were available for sale. He also held that the securities were held in the trading. He therefore, disallowed the amount as diminution in value of security and added the same to the total income.

3. As said above, in the appeal as well as before the Appellate Tribunal, it was held that the securities were stock in trade and so depreciation would amount to loss and not income. The authorities below held that this aspect is well settled through the judgment of this Court in the case of ***Commissioner of Income Tax vs. Bank of Baroda, reported in (2003) 262 ITR 334 (Bombay)*** as well as in the judgment of the Supreme Court in the case of ***UCO Bank vs. the Commissioner of Income Tax, reported in 240 ITR 355 (SC).*** The Supreme Court in the said judgment held that merely because the securities are kept under the head by the bank till the maturity, the said security cannot be treated as a purely investment. The security held by the bank is in the nature of stock in trade.

4. In view of the above, reliance placed by the department on the judgment in the case of ***Vijaya Bank vs. Commissioner of Income***

Tax, reported in 187 ITR 541 SC is misplaced. Thus, the appeal does not raise any substantial question of law and the same is therefore, dismissed.

(V. K. JADHAV, J.) **(A. V. NIRGUDE, J.)**

rlj/