IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

INCOME TAX APPEAL NO.60 OF 2014

The Commissioner of Income Tax-I ... APPELLANT

VERSUS

Nagar Urban Co-op. Bank Ltd. ... RESPONDENT

.....
Shri D.V. Soman, Advocate for appellant
Shri Abhay Kolte, Advocate for respondent
.....

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

DATED: 27th March, 2015.

ORAL ORDER :

1. The appeal is filed by the Department against the order passed by the Tribunal, thereby partly allowing the appeal filed by the assessee.

2. Mr. Soman, the learned counsel for the appellant states that, the appeal involves substantial questions of law. The learned counsel submits that, the following two questions are raised in the present appeal

(I) Whether securities in the HTM category are in the nature of capital asset or not ?

(II) Whether depreciation (loss) from shifting of securities from the FS to HTM category is allowable ?

3. The learned counsel further submits that, the Commissioner (Appeals) had rightly come to the conclusion that the R.B.I. norms do not override the provisions of the Income Tax Act. The said securities are held till maturity. They are in the nature of long term investment and, therefore, capital assets and any expenditure incurred on that account cannot be allowed as a trading loss. According to the learned counsel, the Tribunal has lost sight of this aspect of the matter. According to the learned counsel, once it is held that they are not trading assets, they have to be held as a capital assets and any loss pertaining thereto could be allowed as deduction only at the time of transfer or sale of such securities and that in the computation of the income under the head capital gains.

4. The learned counsel further submits that, the Tribunal was not justified in allowing the depreciation (loss) from shifting securities from AFS to HTM i.e. available for sale to held till maturity. The Circular of the Reserve Bank of India in this regard cannot supersede the provisions of the Income Tax Act.

5. Mr. Kolte, the learned counsel for respondent submits that the securities held till maturity are to be considered as stock in trade and the Bank is entitled to revalue the said securities at the close of the assessment year and claim depreciation in respect of the notional loss. The learned counsel relies on the judgment of the Kerala High Court in the case of CIT Vs. Nedungadi Bank Ltd., reported in (2003) 264 ITR 0545. The learned counsel further relies on the judgment of the Apex Court in the case of United Commercial Bank Vs. Commissioner of Income Tax, reported in (1999) 156 CTR (SC) 380. The learned counsel submits that, in the balance sheet the securities and share are valued at cost, but from that no firm conclusion can be drawn. A tax payer is free to employ for the purpose of his trade, his own method of keeping accounts and for that purpose, to value stock in trade either at cost or market price and the method of accounting adopted by the tax payer consistently and regularly cannot be discarded by the Departmental authorities on the premise that he should have adopted a different method of keeping accounts or of valuation.

6. We have considered the submissions of the learned counsel for respective parties. With regard to the question of amortization of premium on investment held till maturity, the said issue has been dealt with 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 CJ (Bom.) 345. The Division Bench of this Court observed in para 2 thus :

> "2. Mr. Suresh Kumar, the learned counsel appearing on behalf of the appellant, submitted that the impugned order passed by the ITAT requires interference and gives rise to substantial questions of law that need to be answered by this Court and read as under :-
>
> (A) . . . .
>
> (B) . . . .
>
> (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) ?

The Division Bench further observed in para 7 of the judgment as under :

> "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."

7. In light of the above, the judgment of the Tribunal holding that disallowance of expenses under the head amortization of premium paid to Government securities debited to Profit & Loss Account are not justified and directing the assessing officer to allow the amortization of premium paid on Government securities, cannot be faulted with.

8. As far as the question of allowing the provision for depreciation of Government securities is concerned, the Tribunal has considered the said aspect considering that the coordinate Bench has already taken such a view so also have considered the regular practice adopted by the Bank for seeking depreciation on such securities as is held by the judgment of the Apex Court in the case of United Commercial Bank (referred supra).

9. In light of the above, no substantial question of law arises. As such, the appeal is dismissed. No costs.

(A.I.S. CHEEMA, J.) (S.V. GANGAPURWALA, J.)

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