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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1117 OF 2013

The Commissioner of Income Tax-II, Thane ..Appellant.
V/s.
Thane Bharat Sahakari Bank Ltd. ..Respondent.

Mr.Suresh Kumar for the appellant.
None for the respondent.

CORAM : S.C.DHARMADHIKARI AND A.K. MENON, JJ.

DATED : 17TH MARCH, 2015

P.C. :-

1. We have heard Mr.Suresh Kumar, learned counsel appearing on behalf of the revenue.

2. The revenue has challenged the order dated 17th October, 2012 of the Income Tax Appellate Tribunal for assessment year 2008-09.

3. The assessee before the Tribunal is a Co-operative bank. It is functioning under the Maharashtra Co-operative Societies Act, 1960 and carries on banking business in terms of a licence issued in its favour by the Reserve Bank of India.

The bank was aggrieved and dissatisfied with the exercise undertaken by the assessing officer. He made certain disallowances on the loss of shifting classified securities amounting ₹2,22,25,310/-.

4. The assessing officer's order was challenged before the Commissioner of Income Tax (Appeals) and the bank relied upon the circular issued by the Reserve Bank of India dated 28th March, 2005. This permitted the bank to shift securities from one category to another only once in a year and further mandated that on such shifting the relative investment would be recorded at the market value on the date of shifting. The Reserve Bank of India also directed that any loss occasioned shall be fully written off in five years.

5. In the present case, while so shifting the securities, the loss was recorded that was because of the likely value on the date of shifting. The Commissioner of Income Tax (Appeals) accepted the bank's claim vide his order which was passed on 29th July, 2011. The Commissioner in paragraph 5 of his order found that the assessing officer sought an explanation and the bank indicated in the explanation that there were certain securities which were purchased at the

ruling price which was higher than their face value. The premium so paid indicates the difference between the purchase price and the face value of the security which are required to be held until maturity under the Reserve Bank of India directives. On the date of maturity, the bank is entitled to receive an amount equal to only face value. Thus, the face value to be received at the time of maturity date is certain and, therefore, the premium needs to be spread over the life of the security. This explanation given by the bank was not accepted by the assessing officer. The Commissioner referred to the RBI policy and guidelines. He also perused the order of the assessing officer. The Reserve Bank of India by the guidelines dated 16th October, 2008 which are referred to permitted write off of losses arising from shifting of securities from one category to another in respect of investment in government securities. It is in these circumstances that the addition made by the assessing officer was deleted. As far as disallowance of ₹70,63,042/- being a proportionate write off, of the premium paid on securities held on maturity, the bank submitted that it purchased the certain securities at a price higher than the maturity value. The excess amount of premium is to be written off on proportionate basis from year to year. A sum of ₹70,63,042/- represents such proportionate expenditure written off in the year under consideration. Even this argument has been accepted.

6. The Tribunal in dismissing the revenue's appeal and upholding the order of the Commissioner found that similar exercise was undertaken by another assessee Latur Urban Co-op. Bank Ltd. for assessment year 2007-08 and the same was dealt with in Income Tax Appeal No,.778/PN/2011 decided on 31st August, 2012 by the Pune Bench of the Tribunal.

7. Once such is the nature of material before the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, then, we are of the opinion that the view taken by the Tribunal cannot be termed as perverse. The Tribunal's view is in consonance with the banking policy and the guidelines issued by the Reserve Bank of India. We further feel that a different treatment cannot be given to an identically situated assessee, namely a co-operative bank. In these circumstances, the revenue's appeal has no merits. It is accordingly dismissed. No order as to costs.

(A.K. MENON, J.) **(S.C.DHARMADHIKARI, J.)**