IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

I.T.A.No. 84 of 2013 ()

AGAINST THE ORDER IN ITA NO.9/COCH/2011 of I.T.A.TRIBUNAL,COCHIN BENCH DATED 18.09.2012

APPELLANT(S)/RESPONDENT:

THE COMMISIONER OF INCOME TAX,
THRISSUR

BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT(S)/APPELLANT:

M/S.SOUTH INDIAN BANK LTD.,
SIB HOUSE, MISSION QUARTERS,
THRISSUR - 680 001

BY ADV. SRI.P. BALAKRISHNAN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 03-07-2015, ALONG WITH I.T.A. NO.106 OF 2013 & CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE A: A TRUE COPY OF THE ORDER OF THE ASSESSING OFFICER U/S. 143(3) READ WITH SEC.254 DATED 29.11.2007.

ANNEXURE B: TRUE COPY OF THE ORDER OF THE COMMISIONER OF INCOME TAX (APPEALS) DATED 29.10.2010.

ANNEXURE C: TRUE COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL IN ITA NO.09/COCH/2011 DATED 18.09.2012.

ANNEXURE D: TRUE COPY OF THE ORDR OF THE INCOME TAX APPELLATE TRIBUNAL IN ITA NO.ITA NO.1031(COCH)/2004 DATED 28.09.2006.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

I.T.A Nos.84, 106, 173, 311 & 316 of 2013

Dated this the 3rd day of July, 2015

JUDGMENT

Antony Dominic, J.

These appeals filed by the Revenue are pertaining to the assessment years 2000-2001 to 2004-2005. The Respondent, a scheduled Bank, made investments in shares in certain private companies and on the basis that the companies were defunct and that the market value of the shares was nil, the assessee claimed deduction under Sec.36(1)(vii). That was disallowed by the Assessing Officer. In the appeals that were filed before the Appellate Commissioner, assessee claimed that shares were stock-in-trade and the loss was on devaluation of shares. However, the Appellate Commissioner affirmed the order passed by the Assessing Officer and dismissed the appeals.

2. In the further appeals that were filed before the Tribunal, the dis-allowance as ordered by the Assessing Officer was affirmed. However, the Tribunal took the view that since

the investments made by the assessee were in the nature of stock-in-trade, the Assessing Officer should consider if there was loss on account of devaluation of the shares. Accordingly, the Tribunal remitted the matter to the Assessing Officer, with a direction to re-consider the matter with notice to the parties and after affording opportunity to the assessee to adduce evidence. Accordingly, the Assessing Officer issued notice and after hearing the assessee, passed Annexure-A order, again disallowing the deduction claimed by the assessee. The main reason stated in the assessment order is that despite seeking clarifications, the assessee did not offer satisfactory clarification nor did the assessee produce any evidence to substantiate their case of devaluation of shares. This was confirmed by the Appellate Commissioner by dismissing the appeals filed by the assessee.

3. Further appeals were filed before the Tribunal and the Tribunal disposed of the appeals holding that the principles laid down in the judgments of this Court in the cases of '***CIT v. Nedungadi Bank Ltd.***' [(2003) 264 ITR 545 (Ker.)] and '***Commissioner of Income Tax v. Lord Krishna Bank Ltd.***' [(2011) 339 ITR 606 (Ker.)] are applicable to the facts of the

cases. On that basis, the Tribunal held that the Reserve Bank of India guidelines to value unsecured shares on the basis of yield to maturity method adopted for evaluation of securities is to be adopted. Accordingly, the Tribunal set aside the orders of the lower Authorities and remitted the cases to the Assessing Authority with a direction to allow notional loss claimed by the assessee, on revaluation of the shares as deduction while computing the total income. It is aggrieved by these orders, the Revenue has filed these appeals, framing the following questions of law:

> *"1. Whether on the facts and in the circumstances of the case and in the light of the findings of the CIT (A) that "no supporting evidence were furnished in support of devaluation of bond", and of the ITAT (Para 14 of Annexure D) in assessee's own case - the assessee's bank has to prove that in fact there was devaluation of the bonds for which the deduction was claimed and also in the absence of proof being provided by the assessee-*
>
> *i. the Tribunal is right in law -*
>
> *a) in relying on the decisions of the Hon'ble High Court where Hon'ble Court did not have to address or take into consideration such defects/lack of proof?*
>
> *b) in directing to allow the notional loss claimed by the assessee on revaluation of the securities as deduction while computing the total income?*
>
> *2. Whether on the facts and in the circumstances of the case and in the absence of proof being provided by the assessee in support of the claim*

> (a) *the Tribunal is right in law in interfering with the assessment disallowance?*
>
> (b) *is not the order of the Tribunal perverse and invalid?".*

4. We heard the learned Standing Counsel for the appellant and the learned counsel appearing for the Respondent.

5. Although as rightly contended by the learned Standing Counsel appearing for the appellant, it is true that the assessee had failed to adduce evidence as directed by the Tribunal in the first round of the litigation, the main reason which prevailed upon the Assessing Officer to disallow the deduction when the impugned order was passed after the matter was remanded to him, is his conclusion that the R.B.I guidelines to value the unsecured shares on the basis of yield to maturity method are inapplicable and cannot be adopted. This view taken by the Assessing Officer is contrary to the principles laid down by this Court in the judgments in the cases of '***Nedungadi Bank Ltd.***' (*supra*) and '***Lord Krishna Bank Ltd.***' *(supra).* It was therefore that the Tribunal reversed the view taken by the Assessing Officer and directed that the notional loss claimed on revaluation of the securities as

deduction, be allowed.

6. In our view, since as held by this Court, the R.B.I guidelines are applicable to the cases in question, the view taken by the Tribunal cannot be said to be illegal. Therefore, answering the questions of law framed against the Revenue and in favour of the assessee, these appeals are dismissed.

Sd/-

ANTONY DOMINIC
JUDGE

Sd/-

SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-