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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 306/2016**

PRINCIPAL COMMISSIONER OF INCOME-TAX-07 ..... Appellant
Through Mr. Dileep Shivpuri, Sr. Standing Counsel and Mr. Sanjay Kumar, Jr. Standing Counsel

versus

M/S ORIENTAL BANK OF COMMERCE ..... Respondent
Through None

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>
% **11.05.2016**

1. This appeal by the Revenue against order dated 4th November, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1937/Del/2011 and ITA No. 1961/Del/2011 for the assessment year ('AY') 2007-08 raises three grounds of challenge.

2. The first ground urged in the appeal is that ITAT has erred in law in deleting the addition pertaining to the claim of loss on account of fall in value of the investment held as stock in trade to the extent of Rs. 205.10 crores.

3. The ITAT found that the Assessee has been consistently reflecting the investment as stock-in-trade in its balance sheet. The ITAT has noted that

the Assessee had in compliance with the direction of the Reserve Bank of India (RBI) transferred SLR securities appreciating to Rs. 1664.32 crores from the 'available for sale' category to the 'held to maturity' category during the AY in question. This resulted in mark to market devaluation of Rs. 205.43 crores which was debited to the P&L account. regarding maintaining a minimum amount of stock as reserve. The AO disallowed this by terming it as a notional and not a real loss. The ITAT disagreed and reversed the AO in light of the legal position explained in the decision of the High Court of Karnataka in ***Karnataka Bank Ltd. v. Assistant Commissioner of Income Tax [2013] 356 ITR 549 (Kar.)*** and the decisions High Court of Bombay in ***Commissioner of Income Tax v. Bank of Baroda [2003] 262 ITR 334 (Bom)*** and ***Commissioner of Income Tax v. HDFC Bank Ltd. [2014] 368 ITR 377 (Bom)***. The ITAT has noted that the above decisions referred to the decisions of the Supreme Court in ***United Commercial Bank v. Commissioner of Income Tax [1999] 240 ITR 355 (SC)*** and ***Southern Technologies Ltd v. The Joint Commissioner of Income Tax [2010] 320 ITR 577 (SC)***.

4. However, Mr. Shivpuri, learned Senior standing counsel appearing for the Revenue, seeks to place reliance on another decision of High Court of Karnataka in ***Commissioner of Income Tax v. ING VYSYA Bank Ltd. [2013] 356 ITR 532 (Kar.)*** where, in the facts of that case it was held that where the Assessee invested in securities for the purpose of complying with RBI instructions, such investments could not be termed as investment in the form of security ready for sale.

5. The Court is not persuaded to concur with the view expressed in ***ING***

VYSYA Bank Ltd. *(supra)* which appears to have been decided in the peculiar facts of that case. The Court prefers to adopt the reasoning in the decision the Karnataka High Court in ***Karnataka Bank Ltd.*** *(supra)* and the Bombay High Court in ***HDFC Bank Ltd.*** *(supra).* The Court accordingly declines to frame a question on this issue.

6. The second issue urged is that that ITAT ought not to have allowed the Assessee to raise an additional ground regarding the deduction claimed under Section 36(1)(vii) of the Act and ought not to have remanded the said issue to the AO for a fresh determination.

7. Having perused the impugned order, the Court finds that the ITAT accepted the plea of the Assessee that all the relevant facts in this regard were already on record. Only a pure legal ground was being urged on that basis. In the circumstances, the Court declines to frame a question on this issue as well.

8. The last issue urged is that the ITAT erred in deleting the addition on account of excess claim of depreciation on the LAN/WAN equipments. The Assessee claimed depreciation @ 60% by treating them as computer peripherals whereas the AO granted depreciation @ 15% by treating them as plant and machinery.

9. Mr. Shivpuri, urged that the said equipments were not essential for the working of computers in the Assessee's organization and, therefore, could not be treated as computer peripherals. The Court is unable to agree with the above submission. Where the Assessee uses a network of computers for its

business purposes, the LAN/WAN equipment is an essential art of the computer system. The ITAT's view to the above effect cannot be said to be perverse. In the circumstances, the Court declines to frame a question on this issue as well.

10. The appeal is accordingly dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

MAY 11, 2016
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