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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Decision delivered on: 21.09.2023**

+ **ITA 541/2023**

PR. COMMISSIONER OF INCOME TAX -7, DELHI Appellant
Through: Mr Puneet Rai, Sr. Standing Counsel
with Mr Ashvini Kumar and Mr
Rishabh Nangia, Advs.

versus

M/S PUNJAB AND SIND BANK Respondent
Through: Mr Sumit Lalchandani, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.49014/2023 [Application filed on behalf of the appellant seeking
condonation of delay of 370 days in re-filing the appeal]

1. This is an application moved on behalf of the appellant/revenue,
seeking condonation of delay in re-filing the appeal.

1.1 According to the appellant/revenue, there is a delay of 370 days in re-
filing the appeal.

2. Mr Sumit Lalchandani, learned counsel, who appears on behalf of the
respondent/assessee, says that he does not oppose the prayer made in the
application.

3. Accordingly, the prayer made in the application is allowed.



4. The application is disposed of, in the aforesaid terms.

ITA 541/2023

5. This appeal concerns Assessment Year (AY) 2013-14.

6. Via the instant appeal, the appellant/revenue seeks to assail the order dated 12.07.2021, passed by the Income Tax Appellate Tribunal [in short, “Tribunal”] in ITA No. 781/Del/2018 and ITA No. 1208/Del/2018.

7. A perusal of the appeal shows that the following questions of law have been proposed by the appellant/revenue:

“A. Whether in the facts and circumstances of the case, Hon’ble ITAT as well as the Ld. CIT[A] erred in law deleting the addition of Rs. 17,63,07,641/- made by the AO in respect of depreciation of securities as the assessee contention that depreciation is claimed in accordance with the guidelines of the RBI is not justified and the fact remains that investments have not been shown in the books as “stock in trade” and its resultant profits on sale are not enhanced by the value of depreciation in subsequent years when these investments are actually sold?

B. Whether in the facts and circumstances of the case, the Hon’ble ITAT as well as the Ld. CIT[A] has erred in deleting the disallowance of Rs. 187,35,15,770/- made by the AO out of the contribution to Punjab & Sind Bank Employee’s Pension Fund Trust since the above contribution were neither the ordinary annual contribution nor the initial contribution of the pension fund?

C. Whether in the facts and circumstances of the case, the Hon’ble ITAT as well as the Ld. CIT[A] has erred in deleting the disallowance of Rs. 13,63,83,000/- made by the AO u/s 14A read with under Rule 8D(2)(ii) and 8D(2)(iii), as the assessee had made investment and the provisions of section 14A are applicable in the case?”

8. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of appellant/revenue, fairly informs us that insofar as proposed



questions A&B are concerned, they are covered by the decision of the coordinate bench of this court dated 18.09.2017, passed in ITA No. 737/2017, titled ***Principal Commissioner of Income Tax-07 vs Punjab & Sind Bank.***

9. Likewise, insofar as proposed question 'C' is concerned, Mr Rai informs us that it is covered by the decision of another coordinate bench of this court dated 16.10.2019, passed in ITA No. 904/2019 & 906/2019, titled ***Pr. Commissioner of Income Tax-7 vs M/s Punjab and Sind Bank.***

10. We may note that insofar as the proposed question 'C' is concerned, it is also covered by the decision dated 09.09.2021, rendered by the Supreme Court in Civil Appeal no. 9606 of 2011, titled ***South Indian Bank vs. Commissioner of Income Tax.***

10.1 The relevant observation made in paragraph 25 of the above-mentioned judgement is extracted hereafter:

“Proceeding now to another aspect, it is seen that the Central Board of Direct Taxes (CBDT) had issued the Circular no. 18 of 2015 dated 2-11-2015, which had analyzed and then explained that all shares and securities held by a bank which are not bought to maintain Statutory Liquidity Ratio (SLR) are its stock-in-trade and not investments and income arising out of those is attributable, to business of banking. This Circular came to be issued in the aftermath of CIT v. Nawanshahar Central Co-operative Bank Ltd. [2007] 160 Taxman 48/289 ITR 6 (SC), wherein this Court had held that investments made by a banking concern is part of their banking business. Hence the income earned through such investments would fall under the head Profits and Gains of business. The Punjab and Haryana High Court, in the case of Pr CIT v. State Bank of Patiala [2017] 88 taxmann.com 667/393 ITR 476 (Punj. & Har.), while advertising to the CBDT Circular, concluded correctly that shares and securities held by a bank are stock-in-trade, and all income received on such shares and securities must be considered to be business income. That is why section 14A would not be attracted to such income”.



11. We may note that there appears to be no dispute that subject shares were held as stock in trade by the respondent/assessee.

11.1 Therefore, in any event, recourse to Section 14A could not have been taken which is concerned with investments.

12. Given the aforesaid circumstances, we are of the view that no substantial question of law arises for our consideration.

13. Since we are informed that a Special Leave Petition (SLP) against the aforementioned ITAs has been preferred, the parties will abide by the final decision in that SLP.

14. Accordingly, the appeal is closed.

15. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J.

GIRISH KATHPALIA, J.

SEPTEMBER 21, 2023/RY

Click here to check corrigendum, if any