



\$~1

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

%

Date of Decision : 21.11.2024

+ **ITA 890/2018**

PUNJAB NATIONAL BANK

.....Appellant

Through: Mr. S. Krishnan and Mr. Harshit
Chauhan, Advocates

versus

**PR. COMMISSIONER OF INCOME TAX,
DELHI - V,**

.....Respondent

Through: Mr. Sanjay Kumar, Ms. Esha and Ms.
Monica Benjamin, Advocates

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (ORAL)

1. The Punjab National Bank (hereafter *the appellant*) has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 16.03.2018 passed by the learned Income Tax Appellate Tribunal (hereafter *the learned ITAT*) in ITA No. 3843/Del/2010, in respect of the assessment year (AY) 2006-07.

2. The Assessee has projected the following questions of law for consideration of the Court:



A. Whether the ITAT's order deciding grounds 2 & 3 raised before it in the Assessee's appeal is a speaking order?

B. Whether the ITAT erred in holding that profit on sale of 'Held To Maturity' category securities in a sum of Rs.27,27,44,102 was to be taxed as business income and not as capital gain?

C. Whether the ascertainment of scale and frequency of trading transactions for the purpose of determining whether they constitute business income or capital gain is to be calibrated on the basis of a person's scale of operations, or on standalone basis?

D. Whether the authorities below were right in holding that the Assessee was in the business of trading in investments, and the said activity was not merely on account of its obligations as a bank?

E. Whether the Revenue authorities could have been permitted to treat profit on sale of HTM securities as business income, while concurrently disallowing loss on revaluation of the said securities as well as security transactions tax there-upon, holding the HTM securities to be Capital Assets?

F. Whether the ITAT erred in confirming disallowance of business loss on the conversion of capital asset into stock-in-trade, amounting to Rs.10,06,04,870?

3. However, it is contended on behalf of the Assessee that the only question that is required to be considered is the Assessee's claim with regard to the disallowance of loss on sale of HTM securities (Held till Maturity Securities, being securities which are held till maturity).

4. It is the Assessee's case that such securities are purchased and held till the same are redeemed by the issuing entity. Accordingly, the Assessee declared the gains from redemption of such securities as profits chargeable under the head 'capital gains', and correspondingly, the losses incurred also



under the same head. This view was rejected by the learned Assessing Officer (hereafter *the AO*), which was upheld by Commissioner of Income Tax (Appeals) [hereafter *the CIT(A)*] and also by the learned ITAT.

5. It is pertinent to note that the Assessee had, during the said proceedings, also raised an alternate plea that in the event, the profits from sale/redemption of HTM securities is charged to tax under the head ‘income from business and profession’, the losses suffered by it should also be allowed as deduction for computation of income under the head ‘income from business and profession’.

6. However, the Assessee’s claim in this regard was rejected on the ground that the Assessee had failed to substantiate its claim for the loss incurred as it had not furnished the details of cost of acquisition and the selling price. The relevant extract of the impugned order is set out below:

“15. We find that the learned AR of the assessee could not controvert the finding of the learned CIT(A). He could not point out any specific error in the order of the learned CIT(A). Further, it is observed that the assessee has treated these securities as stock-in-trade and claimed deduction of loss arising out of the valuation of securities at the year end on the basis of cost or market price whichever is lower basis from the business income. Hence, we find no good reasons to interfere with the order of the learned CIT(A). It is confirmed. The ground of appeal of the assessee is dismissed.

16. Ground no. 3 of the appeal of the assessee is directed against the order of the learned CIT(A) confirming the action of AO in disallowing the loss of Rs. 10,06,04,870/- being the business loss on conversion of capital asset into stock in trade.

17. The brief facts, of the case, are that the Assessing



Officer observed that in the absence of cost of acquisition and selling price, it is not known as to how the figures of business loss of Rs. 10,06,04,870/- has been arrived at. If there was any such loss, it should have been booked in the books of accounts. It is not known whether the loss of Rs. 10,06,04,870/- is over and above the losses claimed in the books of account. The AO observed that the assessee was asked to furnish such details time and again as to how the capital gain of Rs. 31,02,16,914/- as well as the business loss of Rs. 10,06,04,870/- was derived but the assessee could not give the details at all. The AO further stated that once the Held to Maturity category security is converted into Available for Sale, it will suffer two incidence of tax on the date of sale. The first incidence of tax would be the result of application of Section 45(2) which provides for once capital asset is converted into stock-in-trade, capital gain would be taxable and sale consideration would be the market value on the date of conversion. Once the capital asset is converted into stock-in-trade, it will suffer another incidence of tax under section 28 as normal business income where the cost of acquisition will be the cost of security and the sale consideration will be sale price, the difference between sale price and cost price equal business income. According to the AO, in this case, the assessee has failed to substantiate the claim and has not furnished the details of cost of acquisition and the selling price either in the return or during the assessment proceedings. The loss of Rs. 10,06,04,870/- is claimed in the computation of income but is not booked in the books of accounts.

18. On appeal before the learned CIT(A), the assessee submitted that full details were provided to the AO. The capital gain has been worked out by deducting the cost of securities from fair market value of the securities on the date of conversion of capital assets into stock-in-trade. Business loss of Rs. 10,06,04,870/- arising out of sale of such converted stock has been claimed as allowable deduction under the head business income. The assessee further stated that although the AO has not allowed business loss arising on conversion of capital assets into stock-in-trade but has accepted capital gains as offered by the assessee on conversion. Both capital gains and business



income originate from the same transaction. And the assessee accepting one part of Section 45(2) and rejecting other part is itself a fit case for quashing of disallowance made by the AO.

19. The learned CIT(A), after considering the submissions of the assessee held as under:-

“I have carefully considered the submission of the Id. AR and perused the order of the AO. In this regard, it will be relevant to consider the provisions of Section 45(2) which are reproduced as under:

“**45(2)** Notwithstanding anything contained in sub-section(1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and for the purpose of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.”

A plain look at the above provisions makes it clear that it is a deeming provision which creates a legal fiction for the purpose of taxing the capital gain. There may not be actual gain but the provision makes it mandatory for its chargeability. On the other hand, business loss or profit is to be considered as per provisions of Section 28 when the actual sale takes place.

The AO has given a finding that the appellant has failed to substantiate claim of business loss and has not been able to furnish the details of cost of acquisition and the selling price either in the return of income or during the assessment proceedings. The tax audit report also states that cost of acquisition is not ascertained separately. The AO has further mentioned that the loss so been claimed only in the computation of income filed with the return. The contention of the appellant that the action of the AO is contradictory in as much as he has not allowed business loss arising on conversion of capital asset into stock-in-trade but has accepted capital gain, is not correct. As



discussed above, Section 45(2) creates a legal fiction for taxing capital gain on notional basis as that provision is a deeming provision. However, Section 45(2) is: not applicable for business loss or business profit. Business loss or business profit is different from capital gain as the same is taxed at a different rate. In order to claim a business loss as a deduction, the appellant must show that it has actually suffered that loss. In the case under consideration, the appellant has failed to produce any evidence either before the AO during assessment proceedings or before me during appellate proceedings that the appellant has suffered actual loss. In view of the above discussion, I do not find any infirmity in the action of the AO in disallowing the business loss of Rs. 10,06,04,870/- claimed on account of conversion of securities into stock-in-trade. Therefore, this ground of appeal is rejected.”

20. Before us, the AR of the assessee reiterated the submissions made before the learned CIT(A). On the other hand, the learned DR supported the orders of the authorities below.

21. After hearing the rival submissions and perusing the orders of the lower authorities and materials available on record. We find that the Assessing Officer as well as the learned CIT(A) has disallowed the deduction for the loss of Rs. 10,06,04,870/- on the ground that the assessee failed to substantiate the claim and has not furnished the details of cost of acquisition and the selling price either in the return or during the assessment proceedings. Before us also, these details have not been furnished. We, therefore, find no good reasons to interfere with the order of the learned CIT(A). It is confirmed. The ground of appeal of the assessee is dismissed.”

(Emphasis added)

7. The Assessee has now filed documents, which indicate that the Assessee had, during the course of the assessment proceedings, filed communications with the AO providing the details, which indicates that the



Assessee had produced material to substantiate its claim.

8. Mr. Sanjay Kumar, the learned counsel appearing for the Revenue is unable to controvert that the Assessee had filed those documents before the concerned authorities.

9. In view of the above, we consider it apposite to remand the proceedings to the AO to consider the Assessee's alternate claim for loss arising out of the HTM securities, as loss under the head 'income from business and profession'. The finding of the learned ITAT to the effect that no material had been supplied by the Assessee to substantiate the claim is clearly unsustainable.

10. The learned counsel for the Assessee fairly states that as far as the question of treating the profits from the sale of HTM securities as capital gains is concerned, the same stands concluded by the learned ITAT, and the Assessee accepts the same.

11. In view of the above it is not necessary to address any of the other questions of law, which are projected by the Assessee.

12. The appeal is, accordingly, disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 21, 2024

zp