

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

Before Shri Mahavir Singh (JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No. 5065/Mum/2015
(Assessment year: 2011-12)

Dy.CIT, Circle-3, Thane	vs	The Thane District Central Co-operative Bank Ltd, Chhatrapati Shivaji Path, Post Bag No.19, Thane 400 601 PAN : AAAAT0739N
APPELLANT		RESPONDEDNT

Appellant by	Shri Ram Tiwari
Respondent by	Shri Ashok Patil

Date of hearing	26-10-2017
Date of pronouncement	08-11-2017

ORDER

Per G Manjunatha, AM :

This is an appeal filed by the revenue. The appeal arises out of the order dated 30-07-2015 passed by the Commissioner of Income-tax (Appeals)-2, Thane. The revenue raised the following effective grounds of appeal:

1. *On the facts and in the circumstances of the case, the Hon'ble CIT(A) has erred in allowing the expenditure of Rs. 2,09,48,000/- on amortization of premium on Government Securities as revenue expenditure and not capital expenditure.*
2. *On the facts and in the circumstances of the case, the Hon'ble CIT(A) has erred in holding that the RBI guidelines can take*

precedence over the statutory provisions of the Income Tax Act, 1961

3. On the facts and in the circumstances of the case, the Honble 011(A) has failed to observe the decision of Apex Court in the case of Vijaya Bank Ltd. Vs Addl. CIT

4 The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.”

2. The above grounds deal with one question as to whether the Ld.CIT(A) was right in allowing the expenditure of Rs.2,09,48,000 on amortization of premium on Government Securities as revenue expenditure and not capital expenditure.

3. The brief facts of the case are that the assessee a co-operative bank registered with Government of Maharashtra is engaged in functioning as per the framework of Banking Regulations Act, 1949 conducting banking operations from RBI. During the year assessee has debited an amount of Rs.2,09,48,000/- in its P&L a/c as amortised provision for govt. securities. For the assessment year 2011-12 the bank has claimed Rs. 2,09,48,000/- as amortization of premium paid on Central Government Securities held under 'Held to Maturity' category (HTM, hereafter). The Premium, is a cost paid over and above the face value of securities which are purchased to maintain Statutory Liquidity Ratio (SLR) as a regulatory requirement in business of banking under Banking Regulation Act 1949 and as per RBI regulations. The assessee, during the year has amortised an amount of Rs. 2,09,48,000/- in its

account. The assessing officer, drawing support from the RBI circular, which states that where the cost price is less than the face value, the difference should be ignored and should not be amortised or taken to income account since the amount represents unrealized gain, rejected the claim of the assessee on the ground that when the excess is not treated as income, the difference cannot be treated as expense as the same goes against the accounting standard principles; just as the way the gain (in case of excess) is to be realized at maturity, so also the difference has to be treated as capital loss on maturity and the same cannot be claimed as a business expense. Further, securities held in HTM category was not available for sale and hence, a stock which is not tradable could not be held as stock-in-trade. By observing so, the assessing officer denied the claim of the assessee and added the same to the total income. Aggrieved, assessee preferred appeal before CIT(A).

4. Before the CIT(A), the assessee further submitted, as under:-

"The Learned A.O. failed to understand and appreciate that as per the Banking definition all the investments of Bank in securities are stock-in-trade, circulating capital only and they are not in the nature of capital investment. Whereas, interest income earned by appellant bank has been assessed as business income in accordance with the method of accounting regularly employed by your appellant and not as income under the head "Income from Other Sources". Hence, the investments held under HTM category / is stock-in-trade/circulating capital.

In the matter, we keep reliance on the judgment of ITAT Mumbai, in case of The MSC Bank Ltd. vs Asstt. CIT (ITAT Nos. 7109 to 711 9/MUM/ 97) and also a judgment given in the case of CIT vs Ratnagiri Dist. Central Co. Operative Bank Ltd. (under Ref No 414 of 1997 Mumbai High Court.

The Learned A.O. has wrongly interpreted the RBI circular and drawn adverse conclusion that, "HTM investments required to be valued at cost only."

The Learned A.O. has referred the RBI circulars and inferred the adverse meaning that investments/ securities held under Held to Maturity category are investment in the nature of 'Capital Assets' and amortization of premium on Govt. Securities of Rs. 2,09,48,0001- disallowed and added back to income, which is completely wrong, incorrect and against the principles of natural justice and bad in law.

We would like to bring to your honor's kind notice the certain important judgments and principles as under -

A) Judicial Pronouncement and Circular -

The learned A. O. merely overlooking the matter not considered the fact that amortization of premium in respect of investment held under HTM category was in accordance with the method of valuation prescribed by RBI and was consistently followed by the appellant.

In the above matter, we place reliance on judgment of ITAT, Mumbai in the case of ACIT v/s The Bank of Rajasthan Ltd.

B) The Definition of Banking -

Your appellant is engaged in a Business of Banking and the

"Banking" has been defined u/S. 5(i)(b) of Banking Regulation Act, 1949 as -

"banking means accepting, for the purpose of lending or investment, of its of money from public, repayable on demand or otherwise, and withdrawal by cheque, drafts order or otherwise."

Hence, it is one of the parts of routine business of banking, to deploy its finds for purchase, retain and thereafter sale or get redeemed these deployed finds in the form of investment.

Form the definition of banking as above referred it is crystal clear that all kinds, types and natures of investments made by Bank are in the nature of Stock-in-trade, circulating capital only and not as Capital Investments which the learned A. O. has misinterpreted is case of your appellant.

C) RBI circular on Investments Classification -

The Learned A. O. erred in interpreting that the investment classified under HTM category cannot be sold until it's maturity. However, the Point No. 15.2.3 of RBI Circular no. UBD.BPD(PCB).M.C.No. 12/16.20.000/2012-13 issued on classification of investments by bank reads as under -

*"Profit on **sale of investments in this category (HTM)** should be first taken to the Profit & Loss Account, and thereafter be appropriated to the 'Capital Reserve Account."*

From the above guideline issued in RBI Circular, it is crystal clear that the investment held under HTM category can be sold even before it's maturity and not restricted it's sale, maturity, encashment. RBI guidelines has been issued only to facilitate "classification and disclosure" of investment to be made by banks in their financial statements.

D) Classification of Investment under Income tax Act -

The learned A.O. merely looking to classification of investment made as per RBI requirement adversely concluded the investment in HTM category is capital investment in nature. It may be noted

that the classification of investment in to HTM, AFS and HFT category as per RBI guidelines is only for the purpose of compliance of disclosure required by RBI. For taxation purpose, investment of bank constitute a stock-in-trade, circulating capital only as decided by various courts in various judgments cited above. The mere disclosure under different heads according certain statutory requirements should not be the reason to treat stock-in-trade as capital investment and thereby alter intention of holding investment which has been held as stock-in-trade only.

*in this matter, we keep reliance on the decision given by Hon'ble Supreme Court in the case of **UCO Bank (240 ITR 355)**.*

Further, the learned A.O., merely looking to holding period till maturity, of investment held under HTM category adversely concluded this investment as Capital Investment in nature which is beyond reality and incorrect.

We would like to bring your honor's kind notice that, the learned A.O. failed to understand that although the investments are classified under HTM category and to be retained for a long period as per RBI requirements it does not mean that these investments are capital investment in nature. The Learned A.O. failed to understand and appreciate that there are various reasons behind holding investment for long period, which are in nature of certain statutory requirements, market conditions and prudence in managing the funds of the bank. The investment under HTM category can be offered to sell at any given point of time after due considering the statutory requirements, prevailing market conditions, other prudential act and business exigencies to be taken at the time of sale. Appellant can sale, en-cash the said securities at its own sweet will and there is no restriction on the same.

E) Valuation of Investment -

The Learned A.O. with bias minded analyzed RBI circular on valuation of investment and drawn a wrong conclusion that since investments held under HTM category need not marked to market it has not been valued at cost or market price whichever is less and therefore the HTM investment is capital investment in nature.

In this regard, we would like to bring to your honor's kind notice that,

even if the stock-in-trade is carried at cost price, it does not mean that it is capital investment in nature. The valuation of Stock-in-trade for the purpose of Income Tax Act is totally governed u/ S. 145 A of I. T. Act, 1961 which states that, "the valuation of inventory for the purpose of determining the income chargeable under the head Profits and gains of business or profession shall be in accordance with the method of accounting regularly employed by the assessee".

The practice to account the premium paid on HTM securities over remaining period of debiting proportionate unrealizable value of stock to Profit&Loss account thereby reduce the book value of stock (amortization of premium) has been regularly and consistently followed by the bank. Hence, after duly considering this legal parameter it is clear and evident that HTM investment is stock-in-trade, circulating capital only.

Hence, after due considering various statutory and judicial pronouncements, business prudence and established legal provisions, there remains no shadow of doubt that mere disclosure and classification as per certain norms of any other regulatory authority and the holding period of stock cannot change /alter the basic intention of holding investment as a stock-in-trade.

Therefore, it is crystal clear that appellant's investment held under HTM category is stock-in-trade, circulating capital only.

Further we would like to bring to your honor's kind notice that the premium paid on acquisition of investment held under HTM category is allowable as business expenditure under following grounds even -

A) Business expenditure incurred as per Act, Rules and RBI guidelines -

The bank has to make the investment in Central Govt. & State Govt. Securities, Financial institution bonds, Trustee securities bonds, etc. in accordance with the Banking Regulation Act 1949, RBI Guidelines and section 70 of Maharashtra State Co-op Act 1960, in order to maintain the Statutory Liquid Ratio (SLR) and investment

of funds and surplus funds which as a mandatory and statutory requirement.

The bank has in order to adhere with the Rules, Regulation and Acts, has to purchase the securities from the open market. On many occasion bank has to purchase the said securities more than the face value with premium. The premium i.e. excess of amount paid over Face Value, is thereafter recognized as expenditure during the remaining period of holding and this practice is a regularly and consistently followed by your appellant.

As stated earlier as per RBI circular, the securities purchased more than the face value with premium and which are categories as Held To Maturity (HTM), the premium paid (over and above Face Value) required to be amortized over the remaining period of the premium, is recognized as proportionate expenses as per RBI circular No. RPCD. No. BC. 154107 02.08194195 Dt. 2310511995. As stated in the said circular the bank has to amortize the proportionate premium paid on purchase of securities. The amortization of HTM investment is within the compliance of directive issued by the Reserve Bank of India and accounting principles constantly followed by the appellant.

B) Accounting and Revenue recognition principles -

According to basic principles of accounting and revenue recognition, an expenditure on particular asset is required to be recognized as expense in Profit & Loss account as & when and also in a proportion in which it starts to earn income for that enterprise.

Hence, when there is income in the form of interest, which has been offered as business income and also for taxation it will be illogical and against the principle that not to claim deduction of expenditure incurred to earn that income. Because, at the time of maturity/ redemption date, the bank will get only the face value of said securities, and therefore, the proportionate amortization of premium paid is a routine business expenditure incurred in the routine course of business of Banking, which is allowable without any shadow of doubts.

c) Pecuniary loss in the nature of bad debt -

As referred above, since at the time of maturity/ redemption date, the

bank will get only the face value of HTM securities and the amount of premium paid in excess of Face Value stands unrealizable, this unrealizable premium is represented as loss (amount of Bad Debt), which the bank practices to write-off over the remaining period of maturity. Therefore, the proportionate amortization of premium paid is to be considered as a loss incurred (on account of bad debt) in routine course of business of banking.

To summaries the entire matter at the end, we would like to state and explain as under-

- 1. The investment held under 'HTM' category is only a classification for the purpose of compliance with RBI guidelines. In actual scenario, the entire investments of the bank are stock-in-trade / circulating capital only.*
- 2. The basic intention, either to retain, sale, or encash investment in open market under normal course of business of banking cannot be focusing only on classification / disclosure made as per RBI guidelines. RBI itself has allowed shifting of Point no. vi of RBI circular is enough self explanatory and it has made the fact crystal clear that although the investment is held under 'HTM' category can also be sold, en-cashed even before it's maturity as per business exigencies.*
- 3. Since, the interest income received from all the investments constantly has been offered for taxation as **'Profits and Gains from Business or Profession'** and the same has been accepted by Income tax Department for all the years including the current assessment year, therefore it cannot be conclude for this year that investment of the bank held under HTM category is capital investment in nature.*

From the above it is crystal clear and evident that the bank is not under any statutory obligation to hold its investments till maturity but the holding period of investment is totally at the intention and sweet will of your appellant.

In the matter, we place the reliance on the judgment in case of ACIT v/s The Bank of Rajasthan Ltd. (2011 -TIOL-351TAT-MUM) referred earlier and under the these circumstances, amortization of premium on Govt. Securities of Rs. 2,09,48,000/- by your appellant is a revenue expenditure and allowable as a business expenditure without any shadow of doubt."

5. The above submissions of the assessee found favour with the CIT(A), who deleted the addition made by the AO. Aggrieved, the revenue is in appeal before us.

6. We have heard the parties. The Ld.AR of the assessee, placed before us a copy of the order of E-Bench of the Tribunal in assessee's own case for the assessment year 2009-10 in ITA No.7513/Mum/2012 to contend that the issue stands covered in assessee's favour by the abovesaid order of the Tribunal. We find that the by following the judgement of Hon'ble Bombay High Court in the case of CIT vs M/s Gajanan Nagari Sahakari Bank Ltd (supra) and also the Pune Bench of the Tribunal in the case of The Karad Janata Sahakari Bank Ltd vs The TRO in ITA No.2150/PN/2013 for AY 2010-11, upheld the order of CIT(A) in allowing the claim of expenditure on account of amortization of premium on securities. The Ld.DR has acceded to the proposition. Therefore, being consistent with the order of the Tribunal, we do not see any merit in the appeal filed by the revenue. As a result, the order of CIT(A) is upheld and the appeal filed by the revenue dismissed.

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 08th November, 2017.

Sd/-

sd/-

(Mahavir Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 08th November, 2017

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai