



901-ITXA-920-2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.920 OF 2015

The Pr. Commissioner of Income Tax-1 .. Appellant.
v/s.
Bank of Maharashtra .. Respondent.

Mr. Tejveer Singh, for the Appellant.
Mr. Jehangir D. Mistry, Senior Counsel with Ms. Hema Desai with Mr.
Durgaprasad Halwai i/by Singhi & Co., Advocates for the Respondent.

**CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE,JJ.**
DATE : 27th FEBRUARY, 2018.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the common order dated 17.9.2014, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal) relating to Assessment Years 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10. This appeal relates to Assessment Year 2005-06.

2 Revenue urges the following questions of law, for our consideration:

“(i) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in deleting the addition of Rs.359,24,58,508/- in allowing loss of valuation of Held to Maturity (HTM) securities, when HTM securities are capital in

nature ?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that provisions of Section 115JB of the Act are not applicable to a Banking Company ?”

3 The Respondent-Bank in terms of the RBI Guide-lines classifies its investments into three categories:

- (A) Held to Maturity (HTM)
- (B) Available for Sale (AFS) and
- (C) Held for Trading (HFT).

4 The dispute in this appeal is with regard to the appropriate valuation of the HTM securities for the subject Assessment Year. So far Securities (AFS) and (HFT) are concerned, the Authority has held it is to be valued as stock-in-trade i.e. cost or market value whichever is less. The Respondent-Assessee made a claim that (HTM) securities is also its stock-in-trade and therefore, have to be valued at cost or market value whichever is less. Both the Assessing Officer as well as the CIT (A) disallowed the claim and held that it would be continued to be valued at cost on the ground that for earlier years, the Respondent-Bank has been showing value of (HTM) securities at cost. Therefore, it is not open to the Respondent-Bank to change the valuation.

5 In appeal, the Tribunal placed reliance upon the decision of the Karnataka High Court in the case of **CIT v. Corporation Bank Ltd. (1998) 174 ITR 616 (Kar)** and held that irrespective of the basis adopted

for valuation in earlier years, the assessee had the option to change the method of valuation of its closing stock to lower of cost or market value, at any time, provided the change was bona-fide and followed regularly thereafter. In the above context, the impugned order of the Tribunal records the fact that the (HTM) securities are infact held by the Bank as stock-in-trade. This was supported by the evidence furnished by the Respondent in the form of its balance-sheet for various Assessment Years where the (HTM) securities were viewed as stock-in-trade and receipts on thereof were in fact offered as business income. In the aforesaid facts, the impugned order holds that the HTM securities are held by the Respondent-Bank as as stock-in-trade. It holds the categorization as HTM securities as stock-in-trade is quite tenable because the very nature of banking activities allowed as per Banking Regulation Act, 1949 and HTM securities being categorised as 'stock-in-trade' is not dependent on the frequency of their sale/purchase carried out by the Respondent-Bank. On the aforesaid basis, the impugned order of the Tribunal allowed the Respondent-Assessee's Appeal and directed the Assessing Officer to accept the plea of the Respondent-Bank after verifying factual claim made by the Respondent-Assessee.

6 The grievance of the Revenue is that in terms of the RBI Guide-lines which are applicable to the HTM securities of the bank has to be treated as investments. Mr. Singh fairly concedes that if it is to be held stock-in-trade then, the method of valuation of the same at cost or the market price whichever is lower, cannot be faulted.

7 We find that the challenge of the Revenue before us is not that the change sought in the method of valuation of its stock is not bonafide and that it is not regularly followed thereafter. Its only grievance is that these RBI guide-lines classify the same as Investments and, therefore, for the purpose of the Act also HTM securities should be considered to be the Investments. It is well settled that merely because RBI guide-lines direct a particular treatment to be given to particular asset, the same would not necessarily hold good for the purposes of income chargeable to tax under the Act. In fact, the Supreme Court in **Southern Technologies Limited v. The Joint Commissioner of Income-Tax** reported in (2010) 320 ITR 577 has held that the directions of the RBI have nothing to do with computation of Income under the Act. We further find that on the identical issue Karnataka High Court in **Karnataka Bank Ltd. v. Assistant Commissioner of Income-Tax 2013 (356) ITR 549** has inter-alia observed as follows:

“...That the order passed by the authorities holding that in view of the RBI guide-lines, the assessee is estopped from treating the investment as stock-in-trade is not correct....”

8 In the view of the clear finding of fact recorded by the impugned order of the Tribunal that the securities HTM are stock-in-trade and the income on sales have been offered to tax as business income, has not been shown to be perverse.

9 In the above view, proposed question of law at Sr.No.(i) as formulated does not give rise to any substantial question of law and not entertained.

10 Appeal entertained on substantial question of law No.(ii).

11 Registry is directed to communicate copy of this order to the Tribunal. This would enable the Tribunal to keep papers and proceedings relating to the present appeal available, to be produced when sought for by the Court.

(SANDEEP K. SHINDE,J.)

(M.S.SANKLECHA,J.)