

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER
AND Dr. ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Hearing)

आ.अ.सं./I.T.A No.73/AHD/2017

निर्धारण वर्ष/Assessment Year: 2014-15

The Asst. Commissioner of Income Tax, Circle-2(2), Room No. 662, Aayakar Bhawan, Majura Gate, Surat	Vs.	The Surat Peoples Co-operative Bank Ltd., 'Vasundhara Bahavan', Timaliyawad, Nanpura, Surat - 395 001. [PAN: AAAAT 2885 P]
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से /Assessee by	Shri Kamlesh N.Bhatt - CA
राजस्व की ओर से /Revenue by	Smt. Usha Shorte- Sr.DR

सुनवाई की तारीख/ Date of hearing:	15.04.2021
उद्घोषणा की तारीख/Pronouncement on:	15.04.2021

आदेश / O R D E R

PER PAWAN SINGH, JUDICIAL MEMEBER:

1. This appeal by assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-2 [CIT(A)], Surat dated 01.06.2017 for assessment year (AY) 2014-15. Though the assessee has raised multiple grounds of appeal, however, in our considered view, the substantial grounds of appeal relates to deleting the addition on account of 'amortization of premium paid on investment'.
2. At the outset of hearing the Learned authorized representative (Ld. AR for the assessee submits that the grounds of appeal raised by the

revenue is covered in favour of the assessee in assessee's own case for assessment year 2009-10 in ITA No. 957/AHD/2013 dated 30.12.2020, wherein identical ground of appeal was dismissed by this Tribunal.

3. On the other hand the learned departmental representative (DR) for the revenue submits that she rely on the order of assessing officer. The Ld. DR for the revenue further submits that the order of Tribunal for assessment year 2009-10 may be under challenged before Jurisdictional High Court.
4. We have considered the submissions of both the parties and find that similar disallowance on account of 'amortization of premium paid on investment' was made in assessment year 2009-10, however on appeal before first appellate authority the assessee was allowed relief by Ld. CIT(A) by following the order of his predecessor for assessment year 2010-11 and 2011-12. We have further seen that in appeal for assessment year 2009-10, the Tribunal followed the order for assessment year 2010-11 & 2012-13. The relevant part of the order of Tribunal for assessment year 2009-10 is extracted below;

"7. We have considered the submission both the parties and perused the order of the Lower Authorities carefully and the decision of Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2011-12 and 2012-13 dated 03.10.2019(supra). We find that on identical set of facts in assessee's own case for A.Y. 2011-12 and 2012-13, the

Tribunal while affirming the order of the Id.CIT(A) passed the following order.

"10. We have heard the rival submissions and perused the relevant material on record. We find that the issue is duly covered by the decision of Ahmedabad Tribunal in the case of ACIT v. Chanasma Nagrik Sahkari Bank Ltd. [2017] 86 taxmann.com 8 (Ahmedabad-Trib) wherein it was held as under:

"7.1 After considering the above facts, I have carefully considered the reasoning of the AO justifying the disallowance made by him and the submissions made by the appellant in this regard and the facts of the case including the accounting in earlier years. The following material observations are made on the issue:

- (1) As per Section 6 read with Section 5(b) and (c) Banking regulation Act and as per the guideline issued by the Reserve Bank Of India, Investment activities is the normal banking activity and should be treated as banking stock in trade. The format of the balance sheet has been prescribed by the legislature and bank has to report their financial result in that format only. As per this format the Investment in Non-SLR Securities though treated as banking assets (stock in trade) has to be shown in the balance sheet as Investment.*
- (2) The above position has also been clarified by [Circular no. 665 of the CBDT dated 05-10-1993](#).*

"The question whether a particular item of investment in securities constitutes stock-in-trade or a capital asset is a question of fact In fact, the banks are generally governed by the instructions of the Reserve Bank of India from time to time with regard to the classification of assets and also the accounting standards for investments, The Board has, therefore, decided that the Assessing Officers should determine on the facts and circumstances of each case as to whether any particular security constitutes stock-in-trade or investment taking into account the guidelines issued by the Reserve Bank of India in this regard from time to time."

CBDT has further issued instruction for the assessment of banks vide its [Instruction No. 17/2008 dated 26.11.2008](#) (F. No. 228/3/3008 — ITA-III). Point no. VII of the said instruction—

"As per RBI guidelines dated 16th October 2000, the Investment portfolio of the banks is required to be classified under three categories viz. Held to Maturity (HTM), Held for Trading (HFT) and Available for Sale (AFS). Investments classified under HTM category need not be marked to market and are carried at acquisition cost unless these are more than the face value, in which case the premium should be amortized over the period remaining to maturity. In the case of HFT and AFS securities forcing stock in trade of the bank, the depreciation / appreciation is to be aggregated scrip wise and only net

depreciation, if any, is required to be provided for in the accounts. The latest guidelines of the RBI may be referred to for allowing any such claims,"

In such circumstances, where the same method of accounting is followed and allowed from year to year, such claim has been held to be allowable by the different courts. The Hon'ble Mumbai High court in the case of CIT v. Bank of Baroda [\(2003\) 262 ITR 334](#) has held that "Depreciation in value of investment held by bank was allowable as deduction, more so when the loss was debited to P&L A/c which was reflected as provision for liability in the balance sheet and the share and securities were valued at cost on the asset side.

Same proposition has been upheld by Kerala High Court in case of CIT v. Nedungadi Bank Ltd. [\(2003\) 130 Taxman 93](#).

Therefore, even the depreciation in value if had been claimed from year to year, was allowable. Now this allowance of depreciation, which is a provision for loss on the basis of market value; is in effect the application of well known and well accepted principle of valuation of closing stock at 'cost or market price whichever is lower'. This method in fact allows for notional loss. Now, this allowance of depreciation held allowable by the board circular and the different decisions of the High Courts, have been made and could have been made only on the basis of these securities being treated as stock in trade. The assessee has been following consistent method of in effect claiming no depreciation (writing back any provision of depreciation in P&L account (IDR) for computation of total income) and thus valuing closing stock at cost only for showing the income in its returns. In nut shell, as discussed above, the bank has claimed loss in respect of securities which it had always meant to hold as trading assets and shown as AFS as per RBI's guidelines and classifications. Just because the banks have to keep them for longer times because of the nature of their business, it would not change the nature of the asset. Further, as held by Hon'ble Mumbai High court in the case of CIT v. Bank of Baroda [\(2003\) 262 ITR 334](#); the mere fact that the banks are required as per RBI's guidelines to show these in the balance sheet as investment would not affect the nature of the asset. The banks by the very nature of the business may have to park surplus trading funds in securities and although intended to be trading assets may have to keep them for longer periods if funds are not required. The treatment of securities of AFS categories has to be seen in contradiction and contrast with securities of HTM category which are purchased and held for the purpose of Investment only. The circular and instruction of the CBDT being squarely applicable, leaves no doubt on the allowability of the assessee's claim. The ground of appeal is allowed to the extent that the loss is to be taken as business loss.'

6. *The Ld. DR relied upon the order of the AO. In furtherance the Ld. DR submitted that when the assessee itself has classified the securities held by it under the head 'investment', the profit/ loss arising on sale of such securities held as investment have been rightly treated to be of capital nature by the AO.*

7. *The Ld.AR, on the other hand, relied upon the order of the CIT (A). The Ld. AR submitted that the assessee is in peculiar business of banking which is*

regulated by the RBI. The RBI has prescribed a format whereby the securities held are declared under the head 'investment' and further are classified as 'Held to maturity (HTM)' 'Held for trading (HFT)' and 'available for sale (AFS)' as per Reserve Bank of India's Instruction. The Ld.AR submitted that RBI mandatorily requires the banks to classify the investment in government securities as noted above. It was submitted that assessee-company being in banking business is required to compulsorily prepare its balance-sheet as per the provisions of Banking Regulation Act. A standard balance-sheet format is thus prescribed wherein there is specific head 'investment' where the aforesaid securities giving rise to the impugned loss were reflected as per norms & procedure. The notified format does not provide for bifurcation between the securities so held towards 'investment' or 'stock in-trade'. It was submitted that owing to litigation of this type, the issue stands clarified by the CBDT Circular No.665 dated 05/10/1993 as referral to by CIT (A). Therefore, in view of the peculiar facts situation, no interference with the order of the CIT (A) is called for.

8. *We have considered the rival submissions and perused the orders of the authorities below. It is the case of the assessee that the impugned loss arose on sale of securities and bonds emanated from investments which were sub-classified under 'available for sale' (AFS) category at the time of purchase. In view of the aforesaid facts, we find merit in the claim of the assessee that the loss arising on sale of securities/bonds are of trading nature notwithstanding the fact that the securities were grouped under the head 'investment' owing to the prescribed format of the RBI. We find that the order of the CIT (A) dealing with the issue is consistent with the CBDT instruction as well as the facts of the case and does not require any elaboration. Accordingly, we decline to interfere with the order of the CIT(A)."*

11. *We find that the Government securities from the market which has been classified as "held to maturity" (HTM) category and therefore, premium paid over and above the face value of Rs.79,05,467/- over the remaining period of maturity and same is allowable as deduction. As per RBI guidelines dated 16th October 2000, the Investment portfolio of the banks is required to be classified under three categories viz. Held to Maturity (HTM), Held for Trading (HFT) and Available for Sale (AFS). Investments classified under HTM category need not be marked to market and are carried at acquisition cost unless these are more than the face value, in which case the premium should be amortized over the period remaining to maturity. This was explained by the CBDT vide Instruction No. 17 of 2008 dated 26.11.2008 according which investment of banks clarified under HTM category need not be marked to market and are carried at cost unless these are more than face value, in which case, the premium should be amortized over the period remaining to maturity. The Tribunal in the case of State Bank of Saurashtra Bhavnagar v. DCIT 93 ITD 662 (Ahmedabad), Catholic Syrian Bank Ltd. v. ACIT [2010] 38 SOT 553 (Cochin) held that in view of Instruction dated 26.11.2008, deduction of amortized expenditure on premium on Government Securities is*

allowable as expenditure. Further, Hon'ble Jurisdictional High Court in the case of CIT-Rajkot-2 v. Rajkot District Co-Operative bank Ltd. [2014] 43 taxmann.com 161 (Gujarat) wherein it was held that in terms of Circular No. 17 dated 26.11.2008, where Co-operative Bank Ltd. purchases certain Government Securities in order to maintain statutory liquidity ratio (SLR) at a price higher than their face value, premium so paid has to be amortized for remaining period of maturity. In the light of above facts and circumstances, we are of the considered opinion, the amortization expenditure on government securities held as HTM are allowable as deduction. We find that the CIT (A) has rightly allowed this grounds of appeal in favour of the assessee. In view of these facts and circumstances, and following the above decision of Tribunal as well as Hon'ble High Courts, this grounds of appeal of the Revenue is therefore, dismissed."

8. Considering the consistent view of the Tribunal in assessee's own case for A.Y. 2011-12 and 2012-13 respectfully following this, the ground no.1 raised by the assessee allowed."
5. Considering the decision of the Tribunal in assessee's own case for assessment year 2009-10 and following the principal of consistency the ground of appeal raised by the revenue is dismissed.
6. In the result the appeal of the revenue is dismissed.

Order announced on 15th April 2021 at the time of hearing in virtual court.

Sd/-
(Dr.ARJUN LAL SAINI)

(लेखा सदस्य/ACCOUNTANT MEMBER)

सुरत/ **Surat**, दिनांक **Dated: 15th April 2021**

S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Sd/-
(PAWAN SINGH)
(न्यायिक सदस्य/JUDICIAL MEMBER)

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Assistant Registrar, Surat