IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI BENCH 'F', NEW DELHI

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER, AND SHRI K. N. CHARY, JUDICIAL MEMBER

ITA No. 1810/DEL/2016
[Assessment Year: 2012-13]

The A.C.I.T. Circle – 20(1) New Delhi	Vs.	Punjab National Bank Head Office, Finance Division 5, Sansad Marg, New Delhi PAN No. AAACP 0165 G
(APPELLANT)		(RESPONDENT)

Appellant by : Smt. Sulekha Verma, CIT-DR

Respondent by : Shri S. Krishnan, CA
Shri V. Raja Kumar, Adv

Date of hearing: 03/04/2019
Date of Pronouncement: 08/04/2019

ORDER

PER N. K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the Revenue is preferred against the order of the ld. CIT(A) – 7, New Delhi dated 28.01.2016 pertaining to A.Y 2012-13.

2. The Revenue has raised substantive grounds of appeal.

3. At the very outset, the ld. counsel for the assessee stated that all the issues have been decided in the earlier years by the Tribunal in favour of the assessee and against the Revenue. The ld. counsel for the assessee supplied copy of the order of the co-ordinate bench for assessment years 2006-07 to 2010-11 in ITA Nos. 4253 and 2236/DEL/2011 and others.

4. Per contra, the ld. DR stated that the facts of the case in hand are distinguishable from the facts of the earlier years.

5. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below and have judiciously examined the order of the co-ordinate bench. We find that the contention of the ld. DR has been considered in the earlier years.

6. Ground No. 1 reads as under:

> *"On the acts and under the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 241,35,77,927/- on account of loss of revaluation of investment held under IF1M Category."*

7. A similar issue was considered by the co-ordinate bench in ITA No. 2469/DEL/2011 vide Ground No. 1 of that appeal. The relevant findings read as under:

> "26. We have gone through the record and perused the order dated 16/03/2018 in ITA No. 4241/Del/2010 in assessee's own case, wherein after considering the case law on this aspect including the decision of the Hon'ble Apex Court in the case of UCO Bank vs. CIT 240 ITR 355 (SC) and the Master Circular of the RBI on the aspect of valuation of investments applicable to all banks prescribed in case of acquisition cost of securities classified under HTM category and also the order dated 25/10/2011 of a coordinate bench of this Tribunal in assessee's own case for the assessment year 2000-06 in ITA No. 2873/Del/2007, the Tribunal held that,-
>
> "..... We find that the Tribunal in the AY 2005-06 vide order dated 25.10.2011 held as under:-
>
> "The next dispute in the Revenue's appeal relates to the deletion of disallowance of depreciation in investment of Rs. 48,82,82,014/-.
>
> We have heard both the sides and find that the issue is fully covered by the earlier years' orders right from AY 2001-01 to 2004-05. The learned CIT(A) has only followed the principle laid down by the Apex Court in the case of UCO Bank - 240 ITR

355. In the light of the aforesaid binding decision of the Apex Court, we do not find any infirmity in the order of CIT(A). The same is dismissed.

35. The learned DR could not point out any specific error in the order of the learned CIT(A). He also could not bring any material on record to show that the order of the Tribunal for AY 2005-06 was varied in appeal before any higher authorities. Hence, we find that no good reasons to interfere with the orders of learned CIT(A) which is confirmed..."

27. It is not the case of the revenue also that there is any change of facts involved in the present appeal from those involved in ITA 2873/Del/2007 or ITA No. 3843 and 4241/Del/2010 so that this Tribunal can take a different view. In the absence of any change of facts and circumstances, we find it difficult to take a different view in the assessee's own case for a subsequent year, from the view that was taken consistently quite for a long time. We, therefore, respectfully following the decisions above find that there is no reason to interfere with the findings of the Ld. CIT(A) on this aspect and the same needs to be upheld. We therefore do not find any merits in the appeal of the revenue on this ground and the same is accordingly dismissed."

8. Respectfully following the findings of the co-ordinate bench [supra], we dismiss Ground No. 1.

9. Ground No. 2 reads as under:

"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 2,33,19,69,576/- made by the assessing officer on account of depreciation on shifting of securities from AFS/IIFT category to HMT Category."

10. A similar issue was considered by the co-ordinate bench in ITA No. 2469/DEL/2011 vide Ground No. 2 of that appeal. The relevant findings read as under:

"32. We have perused the record and the case law relied upon by both the sides. It is an admitted fact that the assessee being a Nationalized Bank is governed by the Banking Regulation Act, 1949; that they are following mercantile system of accounting both for book keeping purpose as well as for tax purposes; that they have been valuing the stock-in-trade (investments) "at cost" in the balance sheet whereas for the same period of time the appellant has been valuing the very same investment "at cost or market value whichever is lower" for income tax purposes; that it is an established rule of commercial practice and accountancy that closing stock can be valued at cost or market price, whichever is lower. It could

be seen from the record that the question as to the reflection of the investments being stock in trade in the audit report, profit and loss account and the annual report with the question of the value of securities as embedded in the closing stock and the corresponding figure as becoming the opening stock in the subsequent year was adverted to Indian judicial precedents.

33. Further as understood from the argument of the Ld. DR, her contention is that no opening stock or closing stock of securities mentioned in the profit and loss account though the assessee had claimed their investment in securities as stock in trade; and that if the investments are stock in trade, it should be reflected in the return of income, audit report, profit and loss account and the annual report and the diminution of the value of securities will be embedded in the closing stock and the corresponding figure will become the opening stock in the subsequent assessment years. On this she submitted that when once the assessee reduces the depreciation and reaches a particular figure as the book value of the securities, then naturally when the securities were sold in the subsequent years the profit should be estimated with reference to the reduced value of the Scrips in the earlier years, but however in the case of the assessee, the cost of the security after reducing the same because of the appreciation was not changed or adjusted in the books

resulting in the books reflecting the low profit and the resultant offering of less amount to tax.

34. The plea of the assessee, on the other hand, is that the treatment of the profit on sale of securities is a two-fold. Firstly, the profit on sale of securities will be lower due to the non attachment of cost of securities with deregulated appreciation claimed, but simultaneously at the second stage of the said transaction, claim of depreciation on securities for the year is also reduced to the extent of a community depreciation claimed earlier and resultantly the profit for the year is worked out correctly after taking into account both the folds of the transaction collectively.

35. On a careful consideration of the matter, we are of the considered opinion that it's not the case of the Ld. assessing officer that in this particular year in respect of any particular security such a thing had happened. It's not the case of the Ld. assessing officer that with reference to any particular scrip there was depreciation claimed in the earlier years, the loss was claimed as deduction but without showing the reduced value of the scrip as the opening value of the stock and thereby on the sale of the scrip the cost price but not the reduced price was taken as the cost of acquisition and thereby any less amount was offered to tax. The entire edifice of the case of revenue is based on the theoretical

suspicion of the Ld. assessing officer that inasmuch as the assessee has not been showing in the balance sheet not the reduced value of the scrip but the cost price of the scrip as the value of the scrip, when the securities were sold it is the cost price of the scrip but not the reduced value of the scrip that was taken to estimate the profits and as a consequence of which the less amount has been offered to tax. It is a verifiable fact with reference to the sales of securities, if any, that took place during the year or earlier or subsequent years. Such an exercise has not been undertaken by the learned assessing officer but merely basing on the figures reflected in the balance sheet which was prepared in accordance with the RBI guidelines, learned assessing officer reached a conclusion that there was an escapement of income due to the preparation of the balance sheet in a particular way, as prescribed by the RBI.

36. If we appreciate the facts of this case in the light of the decision of the Hon'ble Apex Court in UCO Bank vs. CIT 240 ITR 355 (SC) it is clear that since the assessee has been maintaining its accounts on mercantile system, they are entitled to show his real income by taking into account market value of such investments in arriving at real taxable income. All the aspects argued by the Ld. DR were considered by the Hon'ble Apex Court in the case of UCO Bank vs. CIT 240 ITR 355 (SC) and were held in favour of the assessee. The

decision in Southern technologies Ltd (supra) has no application to the facts of the case.

37. There is consistency of the facts on this aspect quite for a long time and all possible arguments have come before the adjudicatory authorities. On a careful consideration of the matter in the light of the submissions on either side, we are of the considered opinion that the question is now fully covered by the orders of the Tribunal in assessee's own case for the earlier years, and while respectfully following the same, we hold the issue in favour of the assessee.

11. Respectfully following the findings of the co-ordinate bench [supra], we dismiss Ground No 2

12. Ground No. 3 reads as under:

"On the facts and in the circumstances of the case and in law. Id (11(A) erred in deleting the addition of Rs. 6,57,29,00,00(1/- on account of contribution made to PAR Employees Pension Fund Trust."

13. A similar issue was considered by the co-ordinate bench in ITA No. 2469/DEL/2011 vide Ground No. 4 of that appeal. The relevant findings read as under:

"48. Ld. CIT(A) found that on similar issue in the assessment year 2005-06, the issue was decided in favour of the assessee vide order dated 14 June 2010 vide paragraph number 10.7 and 10.8 wherein it was held that similar expenses were allowed in earlier years in the assessments made under section 143(3) of the Act and the decision of Delhi ITAT in the case of DCIT verses Ranbaxy laboratories Ltd (2009) 124 TTJ (Delhi) 771 wherein the allowability of expenses towards provision for Pension Fund were held to be allowable expenses and section 43B has no application, is applicable. The fact that the assessee had actually contributed/paid the amount to pension fund makes the case of the assessee even stronger. Following the above orders, Ld. CIT(A) held that the addition of Rs.215.56 crores has to be deleted.

49. We do not find any difference in the facts of the case from their earlier years to render the binding precedents followed by the Ld. CIT(A) inapplicable to the case on hand. In the absence of any change of facts and circumstances, we find it difficult to take a different view. In these circumstances, while respectfully following the above line of decisions, we dismiss this ground of appeal of the Revenue."

14. Respectfully following the findings of the co-ordinate bench [supra], we dismiss Ground No. 3.

15. Ground No. 4 reads as under:

> *"On the facts and in the circumstances of the case, Ld.CIT(A) erred in law in allowing relief to the assessee under Rule 8D(2)(iii) of the Income Tax Rule, 1962 without appreciating the facts of the case and provisions of law.*

16. A similar issue was considered by the co-ordinate bench in ITA No. 2469/DEL/2011 vide Ground No. 4 of that appeal. The relevant findings read as under:

> "8. We have carefully perused the decision in the case of Maxopp Investment Ltd versus CIT (2018) 91 taxman.com 154 (SC) wherein the Hon'ble Apex Court considered two cases wherein the question of predominant intent of investment in shares was pleaded, though on different facts, on the ground that the objective of investing in shares was not to earn the dividend income, but to either retain controlling interest over the company in which the investment was made or to earn the profit from trading in shares. The question was whether the disallowance under section 14A of the Act could be invoked in

the cases where exempt income was earned from shares held as "trading assets" or "stock in trade". The first case relates to Maxopp investment Ltd and the second case relates to the case of State Bank of Patiala. In the case of Maxopp investment Ltd., the assessee company is in the business of finance, investment and was dealing in shares and securities; that they held the shares and securities, partly as investments on the "capital account" and partly as "trading assets" for the purpose of acquiring and retaining control over its group companies, primarily Max India Ltd.; and that the profits resulting on the sale of shares held as trading assets were duly offered to tax as business income of the assessee. In the case of State Bank of Patiala the assessee has exempt income in the form of dividend was earned by the bank from securities held by as stock in trade. The Hon'ble Supreme Court was considering the question that has arisen under varied circumstances where the shares/stocks were purchased by a company for the purpose of gaining control over the said company or as "stock in trade", though incidentally income is also generated in the form of dividends as well.

9. It was argued before the Hon'ble Apex Court that though incidentally income was also generated in the form of dividends, the dominant intention for purchasing the shares was not to earn the dividend income but to acquire and retain

the controlling business in the company in which shares were invested, or for the purpose of trading in the shares as business activity. After considering the entire case law on this aspect in the light of the peculiar facts involved in both the matters, the Hon'ble Apex Court vide paragraph No. 39 and 40 held as follows:-

> 39) In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However we are not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'. What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally which is also an income. However, by virtue of Section 10 (34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share and Stock Brokers P Ltd. case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned.

40) We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business Activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the

investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessar ly a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Pat ala also fail, though law in this respect has been clarified hereinabove.

10. It is, therefore, clear from the above observations of the Hon'ble Apex Court that depending upon the facts of each case, the expenditure incurred in acquiring the shares will have to be apportioned. Hon'ble Apex Court held that the Tribunal and the Hon'ble High Court of Punjab and Haryana arrived at a correct conclusion by setting aside the disallowance under section 14A of the Act in respect of the dividend earned on the shares held as stock in trade, because such shares were held during the businessactivity of the assessee and it is only by a quirk of fate that when the

investee company declared dividend, those shares were held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits.

11. Hon'ble Apex Court made clear distinction of this case from the case of Maxopp investment Ltd where the assessee knew that whenever dividend would be declared by the investee company such dividend would necessarily be earned by the assessee and assessee alone, and it would be in the common knowledge of the assessee that such shares would generate dividend income as well as and when such dividend income is generated that would be earned by the assessee only. Hon'ble Apex Court in unequivocal terms held that in contrast, where the shares are held as stock in trade, this may not be necessarily a situation and the main purpose was to liquidate those shares whenever the share price goes up in order to earn profits. Hon'ble Apex Court, therefore, while rejecting th theory of dominant purpose in making investment in shares- whether it was to acquire and retain controlling interest in the other company or to make profits out of the trading activity in such shares - clearly made a clear distinction between the dividend earned in respect of the shares which were acquired by the assessee in their exercise to acquire and retain the controlling interest in the investee company, and the shares that were purchased for the purpose of liquidating those shares whenever the share

price goes up, in order to earn profits. It is, therefore, clear that though not the dominant purpose of acquiring the shares is a relevant for the purpose of invoking the provisions under section 14 A of the Act, the shares held as stock in trade stand on a different pedestal in relation to the shares that were acquired with an intention to acquire and retain the controlling interest in the investee company.

12. Further, it is brought to our notice that in assessee's own case in ITA No.1519/Del/2016 and 7106/Del/2017 for the assessment year 2012-13, a coordinate bench of this Tribunal considered the arguments on either side and reached the conclusion that, insofar as the assessee bank is concerned section 14A of the Act has no application in view of the above law laid down by the Hon'ble Apex Court in the case of Maxopp investments Ltd, (supra).

13. We, therefore, while respectfully following the above decision, hold that no addition in case of the assessee under section 14-A is sustainable. Hence, ground of appeal of assessee is allowed and the ground of appeal of the Revenue is dismissed."

17. Respectfully following the findings of the co-ordinate bench [supra], we dismiss Ground No. 4.

18. Ground No. 5 reads as under:

> *"On the facts and in the circumstances of the case, Ld.CIT(A) erred in law deleing the disallowance u/s 36(l)(viii) of Rs. 1,33,68,0(1,000/- following the decision for A Y 2009-10 and 2010-11 and 2011-12 which was not accepted b> the department and an appeal has been filed in Hon'ble ITAT. Hence the matter*

19. A similar issue was considered by the co-ordinate bench in ITA No. 4722/DEL/2012 vide Ground No. 3 of that appeal. The relevant findings read as under:

> "71. Before Ld. CIT(A) assessee placed reliance on the decision of a coordinate bench of this Tribunal in Power Finance Corporation limited verses JCIT (2008) 16 DTR (Delhi-Trib) 519 where it was held that there is no time limit for creation of special reserve under section 36(1)(viii) of the Act and that the entire direction claimed in the revised return filed on 30th March 2010 was allowable. Ld. CIT(A) held that such decision is binding precedent on the aspect.

CIT(A), however, held that inasmuch as the ld. AO was not satisfied with the method followed by the assessee bank that they had not correctly calculated the deduction under section 36(1)(viii) of the Act and the Ld. AO was of the view that the assessee bank had claimed profit attributable to eligible business and computed the same on proportionate basis, based on the total fund deployed method, Ld. CIT(A) directed the assessee to furnish the correct computation of eligible deduction under section 36(1)(viii) of the Act before the Ld. AO within 30 days and the AO shall verify the same to grant deduction.

72. We do not find anything illegality or irregularity in this direction given by the Ld CIT(A). As a matter of fact Ld. CIT(A) treated this claim of the assessee as allowable and remanded matter for the limited purpose of submission of the current computation under section 36(1)(viii) of the Act. We, therefore, uphold the directions of the Ld. CIT(A) and dismiss this ground of appeal."

20. Respectfully following the findings of the co-ordinate bench [supra], we dismiss Ground No. 5.

21. Ground No. 6 reads as under:

"On the facts and in the circumstances of the case, Ld. CIT(A) erred in law in deleting the addition of Rs. 1,08,99,093/- made In the assessing officer on account of goodwill."

22. A similar issue was considered by the co-ordinate bench in ITA No. 2469/DEL/2011 vide Ground No. 6 of that appeal. The relevant findings read as under:

"52. Ld. CIT(A) in the impugned order observed that this issue has been recurring from the Assessment year 2003-04 and the assessee has been making the claim of deposition and goodwill claim to have acquired an amalgamation of the erstwhile Nedungadi Bank Limited with the assessee bank, and after discussing the issue in detail the first appellate authority allowed the deposition on goodwill for the Assessment year 2003-04 and was followed in the subsequent years. Ld. CIT(A) noted that it is only a consequential claim during this year also and in view of the fact that his predecessors held the issue in favour of the assessee consistently for all these years, while following the same, we direct the Ld. AO to allow deposition on WDV of the block goodwill for this year also.

53. Facts are similar for these years. Nothing was pleaded before the Ld. CIT(A) to take a different view from the view that was taken for the earlier years. We do not find anything perversity in this finding of the Ld. CIT(A) and it needs to be upheld. We accordingly uphold the same and dismiss this ground of appeal of revenue."

23. Respectfully following the findings of the co-ordinate bench [supra], we dismiss Ground No. 6.

24. In the result, the appeal of the revenue in ITA No. 1810/DEL/2016 is dismissed.

Order pronounced in the open court on 08.04.2019.

Sd/- **Sd/-**

(K.N. CHARY) **(N. K. BILLAIYA)**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

Dated: 08.04.2019

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR, ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	