

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 2349 & 2350/Ahd/2018

(निर्धारण वर्ष / Assessment Year : 2012-13)

Kankaria Maninagar Nagarik Sahakari Bank Ltd. Bhagwan Chamber, Maninagar Char Rasta, Maninagar, Ahmedabad 380008	बनाम/ Vs.	Deputy Commissioner of Income Tax Circle – 6(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAK6862D		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Rahul Patel, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri V. K. Mangla, Sr. DR

Date of Hearing	29/04/2024
Date of Pronouncement	08/05/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

These two appeals are filed by the assessee against separate orders of the Commissioner of Income Tax (Appeals)-6, Ahmedabad, (in short ‘the CIT(A)’) dated 27.09.2018 for the Assessment Year 2012-13. While one appeal is against order u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred as ‘the Act’), the other one is against the rectification order u/s. 154 of the Act. These appeals were heard together and

are being disposed of by this consolidated order for the sake of convenience.

ITA No. 2349/Ahd/2018

2. The grounds of the appeal raised by the assessee in this appeal are as under:

- “1. *Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad grievously erred in law as well as in facts in upholding disallowance of loss on sale of Government Securities of Rs. 38,55,000 claimed by the Assessee Bank.*
 - a. *Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad was not correct in disallowing loss claimed in respect of sale of Government Securities held by the Assessee Bank in compliance of the regulatory guidelines of the Reserve Bank of India and provisions of the Banking Regulation Act, 1949 to meet its liquidity requirements.*
 - b. *Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad was not correct in disallowing loss in respect of sale of Government Securities held by the Assessee Bank as stock for its banking business.*
 - c. *Ld. Commissioner of Income Tax (Appeals) - 6, Ahmedabad was not correct in upholding that investments were under HTM category merely because balance sheet of the bank does not specify anything and maturity is of 2028 and 2034 and the contention of ld. Appellate Authority was presumptive and factual. Ld. Commissioner of Income Tax (Appeals)6, Ahmedabad was not correct in linking the classification of the security with the year of its maturity.*
 - d. *Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad was not correct in upholding that none of the investments were in AFS category merely because the bank is mandated by Reserve Bank of India to keep certain parts of the securities under HTM Category which could be maximum upto 25%. Ld. Commissioner of Income Tax (Appeals) 6, Ahmedabad depended upon the presumption rather than facts in holding that none of the securities were under AFS.*
 - e. *Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad was not correct in holding a view that loss on sale of Government Securities held in category of*

HTM is not allowable. Ld. Commissioner of Income Tax (Appeals) - 6, Ahmedabad was ought to have proceeded to allow the loss on sale of Government Securities held by the Assessee Bank as part of its business activity irrespective of its classification under the guidelines of Reserve Bank of India.

2. *Ld. Commissioner of Income Tax (Appeals) 6, Ahmedabad was not justified in disrespecting and disregarding judicial discipline inasmuch as she has failed to follow the decision delivered by Hon'ble Gujarat High Court in case of Hon'ble Commissioner of Income-Tax, Rajkot V/s Rajkot Dist. Co. Op. Bank Limited and Hon'ble Ahmedabad Tribunal in case of Hon'ble Tribunal in case of Asst. Commissioner of Income-Tax v/s The Mehsana Urban Co. Op. Bank Ltd.*
3. *Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad was not correct in law as well as in facts in passing impugned order upholding the re-assessment order made u/s 143 read with section 147 involving change of opinion. Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad failed to observe that re-assessment proceeding was ultra-virer and illegal.”*

3. The assessee is engaged in the business of banking activity. The original assessment in this case was completed u/s. 143(3) of the Act on 30.03.2015. Thereafter, the AO had initiated proceeding u/s.147 of the Act and the assessment u/s. 143(3) r.w.s. 147 of the Act was completed on 05.09.2017. The case was reopened for the reason that the assessee had claimed loss of Rs.38,55,000/- on sale of Government securities in the P&L account and according to the AO, such expenditure can be claimed set-off only against similar capital gain. Further, the assessee had claimed depreciation of Rs.34,48,500/- on Government securities and as per the reason recorded by the AO, such claim of depreciation was admissible only in respect of business assets. Accordingly, the loss of Rs.38,55,000/- on sale of Government securities was disallowed in re-assessment

proceeding which was upheld by the CIT(A) vide the impugned order.

4. Shri Rahul Patel, Id. AR appearing for the assessee Bank submitted that the AO was not correct in disallowing the loss claimed in respect of sale of Government securities as the securities were held in compliance to the regulatory guidelines of the Reserve Bank of India and the provisions of the Banking Regulation Act, 1949 to meet its liquidity requirements. He further submitted that the Id. CIT(A) was not correct in holding that the investments were under HTM category merely because balance sheet of the bank did not specify anything and on the ground that the maturity of the security was of 2028 and 2034. He contended that the Id. CIT(A) was not correct in linking the classification of the security with the year of its maturity. The Ld. AR further submitted that Id. CIT(A) was also wrong in upholding that none of the investments were in AFS category merely because the bank was mandated by Reserve Bank of India to keep certain parts of the securities under HTM category which could be maximum upto 25%. According to Id. AR, the loss on sale of Government securities was part of the business activity of the Bank, irrespective of its classification under the guidelines of Reserve Bank of India and such business loss was allowable under the provisions of Income Tax Act. In this regard, he has drawn our attention to the provisions of Banking Regulations Act and CBDT Circular No.599 of 24.04.1991. The Ld. AR also submitted that the reopening of the case was based on mere change of opinion.

5. Ld. DR, on the other hand, submitted that the assessee had no stock-in-trade in the balance sheet and the “Central and State Government Securities” were appearing under the head ‘Investments’. Therefore, the loss on such investments was rightly treated as capital loss by the AO, which has been correctly confirmed by the CIT(A). He further submitted that there was no bifurcation of HTM and AFS appearing in the balance sheet and, therefore, he supported the order of the ld. CIT(A).

6. We have carefully considered the rival submissions. The basic issue for consideration is whether loss on sale of Government securities as claimed by the assessee is permissible business loss or not. The AO has disallowed the loss on the presumption that Central and State Government securities, the year for maturity of which was specified as 2028 and 2034, were not business stock-in-trade but were in the nature of investments. As per RBI guidelines, the securities are classified in the following heads:

- i. Held to Maturity (HTM)
- ii. Available for Sale (AFS)
- iii. Held for Trading (HFT)

This guideline is primarily to maintain certain percentage of investments as CRR and SLR. Under the provisions of Income Tax, there is no restriction that loss on shares held as HTM will not be allowed as business loss. Therefore, the basic presumption for disallowing the loss that Government securities were not in the nature of AFS but were HTM is found to be untenable. The contention of the Revenue that there was no stock-in-trade

appearing in the balance sheet and the Government securities were shown as “Investment” is also found to be misplaced. As per Banking Regulation Act, 1949, the term “banking” means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise. Further, as per Section 6 of the Banking Regulation Act, in addition to the business of banking, a banking company may also engage in buying and selling of securities and such buying and selling is considered as part of its business activities. Therefore, the investment in Central and State Government Securities as appearing in the balance sheet of the company were its business assets and in the nature of stock-in-trade. Merely because they were shown as investment in the balance sheet they don’t become capital asset, as buying and selling of the securities including Government securities is part of business activity of the assessee company. Further, the CBDT had issued a Circular No.599 dated 24.04.1991 giving clarification regarding treatment of securities as stock-in-trade or investment by the Banks which is reproduced below:

“Clarification regarding treatment of securities as stock-in-trade or investment

1. Clarifications on the following issues have been sought by banks from the Central Board of Direct Taxes:

- (i) Whether the securities held by the banks constitute their stock-in-trade or investment, and consequently whether the loss claimed by the banks on the valuation of their securities should be allowed as a deduction in computing their taxable profits?*
- (ii) Whether deduction claimed in respect of interest paid for broken period on the purchase of securities should*

“2. The matter has been considered by the Board and it has been decided that the securities must be regarded as stock-in-trade by the banks. Therefore, the claim of loss, if debited in the books of account, would be given the same treatment as is normally given to the stock-in-trade. As far as the second issue is concerned, both the interest payments and receipts must be regarded as revenue payments/receipts, and only the net interest on securities shall be brought to tax as business income.

Circular : No. 599, dated 24-4-1991”

7. CBDT has categorically clarified that the securities held by Banks must be regarded as stock-in-trade of the Banks. Therefore, the loss on Government securities of Rs.38,55,000/- as debited in the books of accounts of the assessee has to be treated as loss in stock-in-trade and not a capital loss in investments. As this loss was in the nature of business loss, the AO was not correct in disallowing the same. In view of these facts, the CIT(A) was not correct in confirming the order of the AO disallowing the loss. Accordingly, the AO is directed to allow the loss in Government securities claimed by the assessee as business loss.

8. Since, the appeal of the assessee has been allowed on merit, the ground taken by the assessee against reopening of the case need not to be adjudicated.

9. In the result, appeal filed by the assessee is allowed.

ITA No. 2350/Ahd/2018

10. In the order u/s. 143(3)/147 of the Act, the AO had held that depreciation on Government securities can be claimed only on

business asset and not on investment. However, the depreciation of Rs.34,48,500/- on Government securities was not added in the computation of income. Subsequently, an order u/s. 154 of the Act was passed on 22.11.2017 whereby the mistake apparent from record was rectified and addition of Rs.34,48,500/- was made on account of disallowance of depreciation wrongly claimed on Government securities. The assessee preferred an appeal against this order, which was decided by the Id. CIT(A)-6, Ahmedabad vide order dated 27.09.2018 and the order of the AO was confirmed.

11. In the appeal filed against this order, the assessee has raised the following grounds:

- “1. Commissioner of Income Tax (Appeals)-6, Ahmedabad grievously erred in law as well as in facts in upholding the disallowance of depreciation of Rs. 34,48,500 claimed by the Assessee Bank in respect of the Government Securities.*
 - a. Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad was not correct in disallowing depreciation in respect of the Government Securities held by the Assessee Bank in compliance of the regulatory guidelines of the Reserve Bank of India and provisions of the Banking Regulation Act, 1949 to meet its liquidity requirements.*
 - b. Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad was not correct in disallowing depreciation in respect of the Government Securities held by the Assessee Bank as stock for its banking business.*
 - c. Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad was not correct in disallowing depreciation in respect of the Government Securities provided for by the Assessee Bank on mark-to-market basis.*
 - d. Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad was not correct in upholding that investments were under HTM category merely because*

balance sheet of the bank does not specify anything and maturity is of 2028 and 2034 and the contention of Id. Appellate Authority was presumptive and Factual. Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad was not correct in linking the classification of the security with the year of its maturity.

- e. Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad was not correct in upholding that none of the investments were in AFS category merely because the bank is mandated by Reserve Bank of India to keep certain parts of the securities under HTM Category which could be maximum upto 25%. Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad depended upon the presumption rather than facts in holding that none of the securities were under AFS.*
- 2. Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad was not correct in facts in contending in the impugned order that the Appellant had not made submission on the ground of disallowance of Rs. 34,48,500 more particularly when the Authorised Representative categorically relied upon the decision of Hon'ble Gujarat High Court in case of Hon'ble Commissioner of Income-Tax, Rajkot V/s Rajkot Dist. Co. Op. Bank Limited and Hon'ble Tribunal in case of Asst. Commissioner of Income-Tax v/s The Mehsana Urban Co. Op. Bank Ltd. during the course of personal hearing.*
- 3. Ld. Commissioner of Income Tax (Appeals)-6, Ahmedabad grievously erred in law as well as in facts in upholding the order of Id. Assessing Officer passed w/s 154 of the Income Tax Act, 1961 though there was no mistake apparent from the record. Ld. Commissioner of Income Tax (Appeals) 6, Ahmedabad completely ignored in the impugned order that disallowance of depreciation of Rs. 34,48,500 was an after thought.”*

12. The Id. AR submitted that the Government securities were held in compliance to regulatory guidelines of RBI and were part of business assets of the Bank. The Ld. AR explained that the depreciation on Government securities is not the depreciation as contemplated in Section 32 of the Act, but is the systematic allocation of deterioration in the value of security over its useful life and was an allowable business deduction. He further

submitted that this issue was covered in favour of the assessee by the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2013-14.

13. The ld. DR, on the other hand, supported the order of the AO and the CIT(A).

14. We have carefully considered the facts of the case. It is found that identical issue was involved in assessee's own case for A.Y. 2013-14 which was decided by the Co-ordinate Bench of this Tribunal in ITA No. 2928/Ahd/2017 dated 29.01.2020. The findings given by the Co-ordinate Bench in that case is reproduced below:

“8. We have gone through the relevant record and impugned order. Assessee is a Co.op. Bank and as per mandate assessee has to keep certain investment with itself in order to maintain Statutory Liquidity Ratio (SLR) and Cash Reserve Ratio (CRR) if any loss or deterioration is caused to the value of stock, it is charged to profit and loss account. In our considered opinion, same is allowable as deduction u/s. 37 as Govt. Securities are part of liquid assets, stock in trade.

9. We draw support from a case of Punjab and Haryana High Court High Court in the matter of Pr. CIT, Patiala vs. State Bank of Patiala order dated 30.01.2017 where in similar facts and circumstances, relief was granted to the assessee. We also draw support from a case of ITAT Pune Bench in the matter DCIT vs. Dy. CIT vs. Vishwash Co.op. Bank Ltd. wherein it is held “the method of valuation followed by the assessee Bank was to value investments at cost or market value whichever was lower. ... Law is well settled that the Securities held by the Bank are in the nature of stock-in-trade.

10. In view of the above, we direct A.O. to deleted addition of Rs. 2,44,325/- as claimed by the assessee.”

15. We see no reason to depart from the view already taken by the Tribunal in the assessee's own case. As explained by the assessee the depreciation on Government Securities was

deterioration in the value of security. In essence, this was a loss claimed on valuation of the security. As clarified by the CBDT vide Circular No. 599, reproduced earlier, the loss claimed by the banks on valuation of their securities was a business loss and an allowable deduction. We accordingly hold that the depreciation on Government securities claimed by the assessee bank is allowable, as deduction.

16. In the result, appeal preferred by the assessee is allowed.

17. In the combined result, both appeals preferred by the assessee are allowed.

This Order pronounced on 08/05/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 08/05/2024

S. K. SINHA

True Copy

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad