Bombay High Court Commissioner Of Income Tax-2 vs Hdfc Bank Ltd on 17 July, 2014 Bench: S.C. Dharmadhikari vrd 1 ITXA250/12

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.250 OF 2012

Commissioner of Income Tax-2,

Mumbai 400 020 ...Appellant

v/s

HDFC Bank Ltd. ...Respondent

Mr Suresh Kumar for Appellant. Mr J.D. Mistry, Sr. Counsel with Mr Atul Jasani for Respondent. CORAM : S.C. DHARMADHIKARI AND B.P. COLABAWALLA JJ. Reserved on : 10th July 2014. Pronounced on : July 2014.

JUDGMENT:- [Per B.P. Colabawalla J.] :-

1. By this Appeal under section 260A of the Income Tax Act 1961, challenge has been laid by the Commissioner of Income Tax-2 to the order passed by the Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") dated 15th July 2011 whereby the ITAT allowed the Appeal filed by the Assessee and set aside the order dated 23 rd March 2009 passed by the Appellant invoking his powers under section 263 of the Act. vrd 2 ITXA250/12
2. Mr Suresh Kumar, the learned counsel appearing on behalf of the Appellant / Revenue submitted that the ITAT has totally misdirected itself in setting aside the order passed by the Appellant under section 263 of the Act. According to Mr Suresh Kumar, it was noticed by the Appellant

that a sum of Rs.87.11 lakhs had been wrongly debited to the profit and loss account by the Assessee as a loss on account of transfer of securities held under the category "Available for Sale" to "Held to Maturity" which was allowed by the Assessing Officer in his Assessment Order dated 28th February 2007. Since such an allowance of a notional loss was impermissible under the provisions of the Act, the Appellant was fully justified in invoking his powers under section 263 of the Act, is the submission. In view thereof, Mr Suresh Kumar submitted that the impugned order passed by the ITAT requires interference and gives rise to the following substantial questions of law that need to be answered by this Court and read as under :- "(A) Whether on the facts and circumstances of the case, the Hon'ble Tribunal was correct in allowing the appeal of the assessee by setting aside the order u/s 263 of the act passed by the CIT ?

(B) Whether on the facts and circumstances of the case, the Hon'ble Tribunal was correct in holding that the assessee bank is entitled for claim of notional loss arising out of mere re-classification and consequent revaluation of securities based on RBI's guidelines particularly in view of Hon'ble Supreme Court's decision in the case of Southern Technologies Ltd. v/s Jt. Commissioner of Income Tax (320 ITR 577) ?"

3. We are unable to accept the submission of Mr Suresh Kumar on behalf of the Appellant / Revenue that any substantial questions of law arise in the present case that require our answer. We find that the issue raised in vrd 3 ITXA250/12 this Appeal is squarely covered by a judgment of a Division Bench of this Court in the case of Commissioner of Income Tax v/s Bank of Baroda, reported in (2003) 262 ITR 334 and a judgment of a Division Bench of the Karnataka High Court in the case of Karnataka Bank Ltd. v/s Assistant Commissioner of Income Tax, reported in (2013) 356 ITR 549. We will analyse these two judgments later, after we advert to the facts in the present case.
4. The facts stated briefly are that the Assessee Bank, being a Public Limited Company, filed its return of income for the Assessment Year 2005- 06 on 29th October 2005 declaring a total income of Rs.9,10,41,00,000/-. The said assessment was selected for scrutiny and after the requisite notices were issued to the Assessee, the Assessing Officer completed the assessment and passed his Assessment Order under section 143(3) on 28 th February, 2007 determining the total income of the Assessee at Rs.12,27,85,00,000/-.
5. Subsequently it was noticed by the Appellant that a sum of Rs.87.11 lakhs had been debited to the profit and loss account by the Assessee, as a loss on account of transfer of securities from the category "Available for Sale" to "Held to Maturity" and the same had been allowed by the Assessing Officer. According to the Appellant, since the allowance of such a notional loss was erroneous and prejudicial to the interest of the Revenue, vrd 4 ITXA250/12 he invoked his powers under section 263 of the Act and

passed an order dated 21st March 2009 directing the Assessing Officer to modify his Assessment Order and disallow the deduction of Rs.87.11 lakhs. In a nutshell, the Appellant mainly held that since the Assessee Bank had not transferred the securities to any other third person but had only done a re- classification from "Available for Sale" to "Held to Maturity" categories, the said transfer did not result in any actual loss to the Assessee and therefore the allowance thereof was erroneous and prejudicial to the interest of the Revenue.

6. Being aggrieved by the order passed by the Appellant under section 263 of the Act, the Assessee Bank filed an Appeal before the ITAT, Mumbai Bench. After hearing the representatives of the Assessee as well as the Revenue, the ITAT held that even though the Assessee had challenged the order of the Appellant passed under section 263 of the Act on the ground that the jurisdictional conditions for invoking the said powers were not satisfied, the ITAT allowed the Appeal of the Assessee on merits and without going into the jurisdictional issue. We find that the ITAT, after examining the entire factual matrix of the matter and after relying upon its own judgments in the case of State Bank of Mysore v/s DCIT, reported in 33 SOT 7 (Bang) and ACIT v/s Vijaya Bank, rendered in Income Tax Appeal No.253/BANG/2007 dated 24th January 2008 as well as the judgment of the vrd 5 ITXA250/12 Karnataka High Court in the case of Karnataka Bank Ltd. (supra), held that the claim of the Assessee for the loss of Rs.87.11 lakhs on the transfer of securities from the category "Available for Sale" to "Held to Maturity" was an allowable deduction, and therefore set aside the order passed by the Appellant under section 263 of the Act. Being aggrieved by this order, the Revenue is in Appeal before us.

7. After perusing the order passed by the Appellant dated 23 rd March 2009 and the impugned order passed by the ITAT, we find that the ITAT was fully justified in setting aside the order of the Appellant dated 23 rd March 2009 and allowing the deduction of Rs.87.11 lakhs to the Assessee. In this regard, the reliance placed by Mr Mistry, the learned Senior Counsel appearing on behalf of the Respondent - Assessee on the judgment of this Court in the case of Commissioner of Income Tax v/s Bank of Baroda (supra) is well founded. The facts before the Division Bench in the case of CIT v/s Bank of Baroda (supra) were that the Assessee Bank had in its possession during the relevant assessment year shares and securities worth several crores. The method of valuation followed by the Assessee was to value the investments at cost or market value whichever was lower. During the year of account, depreciation with regard to the securities held by the Assessee Bank was to the tune of Rs.11,82,35,007/- and therefore, the Assessee Bank claimed a deduction with reference to the said depreciation. vrd 6 ITXA250/12 This was disallowed by the Income Tax Officer. Being aggrieved, the Assessee Bank went in appeal to the CIT (Appeals) who took the view that the said investments were rightly valued at the end of the year at cost or market value whichever was lower and the difference

arising as a result of this valuation had to be allowed to the Assessee as a loss. The Revenue, being aggrieved by the order of the CIT (Appeals) carried the matter further to the Tribunal who confirmed the order of the CIT (Appeals). In view thereof, the Revenue approached this Court by way of a reference. On these facts, the question of law framed by this Court was as follows :- "(A) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to deduction on account of depreciation in the value of investments and, consequently, debiting disallowance of Rs.11,82,35,007 ?"

8. This Court, in answering the aforesaid question of law in favour of the Assessee and placing reliance on the judgment of the Supreme Court in the case of United Commercial Bank v/s CIT, reported in (1999) 240 ITR 355(SC) held as under :- "In our view, the judgment of the Supreme Court in United Commercial Bank's case (1999) 240 ITR 355 squarely applies to the facts of this case. In fact, the present case before us is on a stronger footing because in the case of United Commercial Bank, the loss was not debited to the profit and loss account whereas in this case, as can be seen from the working at pages 25 and 26 of the paper-book, the loss of Rs.11,82,35,007/- has been debited to the profit and loss account which is reflected as a provision for liability in the balance-sheet and the shares and securities were valued at cost on the assets side. For the reasons given hereinabove, we answer the abovequoted question in the affirmative, i.e. in favour of the assessee-bank and against the Department." vrd 7 ITXA250/12
9. In the present case, we find that the facts and issues that are covered by the aforesaid judgment squarely apply to the facts and issues raised in the present Appeal. Not only are we in full agreement with the judgment of this Court in the case of CIT v/s Bank of Baroda (supra) but we are bound by the same. We therefore respectfully follow the ratio laid down in the said judgment.
10. We find that even the judgment of the Karnataka High Court in the case of Karnataka Bank Ltd. (supra), reliance on which was placed by Mr Mistry, squarely covers the issue raised in this Appeal. The facts in the case before the Karnataka High Court were that the Assessee was holding securities in different categories as mandated by the RBI Master Circular dated 1st September 2003. The Assessee treated such securities as stock-in- trade and claimed depreciation on the book value after valuing the securities at cost or market value whichever was lower. The Revenue refused to accept the Assessee's plea for the deduction and disallowed the same and added back to the total income the said amount. Aggrieved by the said order, the Assessee preferred an Appeal before the CIT (Appeals). The same was dismissed upholding the contention of the Assessing Authority. Aggrieved thereby, the Assessee preferred an Appeal to the Tribunal. The Tribunal inter alia held that since the securities on which the depreciation had been claimed on the earlier years had not been identified, the issue was vrd 8 ITXA250/12 restored to the file of the Assessing Officer for consideration

afresh and partly allowed the Appeal. Being aggrieved by the said order, Karnataka Bank Ltd. preferred an Appeal to the Karnataka High Court under section 260A of the Act. After discussing various judgments of the Supreme Court, the Karnataka High Court held as under :- "From the aforesaid judgments of the apex court, now it is clear that a method of accounting adopted by the taxpayer consistently and regularly cannot be discarded by the Departmental authorities on the view that he should have adopted a different method of keeping the accounts or on valuation. Financial institutions like bank, are expected to maintain accounts in terms of the RBI Act and its regulations. The form in which, accounts have to be maintained is prescribed under the aforesaid legislation. Therefore, the account had to be in conformity with the said requirements. The RBI Act or the Companies Act do not deal with the permissible deductions or exclusion under the Income Tax Act. For the purpose of the Income Tax Act, if the Assessee has consistently been treating the value of investment for more than two decades the investments as stock-in-trade and claimed depreciation, it is not open to the authorities to disallow the said depreciation on the ground that in the balance-sheet it is shown as investment in terms of the RBI Regulations. The RBI Regulations, the Companies Act and the Income Tax Act operate altogether in different fields. The question whether the assessee is entitled to particular deduction or not will depend upon the provision of law relating thereto and not the way, in which the entries are made in the books of account. It is not decisive or conclusive in the matter. For the purpose of the Income Tax Act whichever method is adopted by the assessee, a true picture of the profits and gains, i.e. real income is to be disclosed. For determining the real income, the entries in the balance- sheet is required to be maintained in the statutory form may not be decisive or conclusive. It is open to the Income Tax Officer as well as the assessee to point out true and proper income while submitting the income tax returns. Even if the assessee under some misrepresentation or mistake fails to make an entry in the books of account, although under law, a deduction must be allowed by the Income Tax Officer, the assessee will not lose any right on claiming or will be debarred from being allowed the deduction. Therefore, the approach of the authorities in this regard is contrary to the well settled legal position as declared by the apex court. In the instant case, the assessee has maintained the accounts in terms of the RBI Regulations and he has shown it as investment. But consistently for more than two decades it has been shown as stock-in-trade and depreciation is claimed and allowed. Therefore, notwithstanding that in the balance-sheet , it is shown as investment, for the purpose of Income Tax Act, it is shown as stock-in-trade. Therefore, the value of the stocks being closely connected with the stock market, at the end of the financial vrd 9 ITXA250/12 year, while valuing the assets, necessarily the bank has to take into consideration the market value of the shares. If the market value is less than the cost price, in law, they are entitled to deductions and it cannot be denied by the authorities under the pretext that it is shown as

investment in the balance-sheet." (emphasis supplied)

11. We therefore find that the issue raised in this Appeal is also squarely covered by the judgment of the Karnataka High Court in the case of Karnataka Bank Ltd. (supra).
12. In view thereof, we find no infirmity in the order passed by the ITAT. The present Appeal does not raise any substantial question of law as projected by the learned counsel appearing for the Appellant. The Appeal is therefore dismissed. No order as to costs. ( B.P. COLABAWALLA J. ) (S.C. DHARMADHIKARI J. )