

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.782 & 783/PUN/16  
निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

The Vishweshwar Sahakari Bank Ltd.,  
471/472, Market Yard,  
Gultekdi, Pune – 411 037  
PAN : AAAAT0755G

ACIT, Circle-7, Pune

Vs.

Appellant

Respondent

Appellant by

Shri Sunil Ganoo

Respondent by

Shri Hemant Leuva

Date of hearing

11-02-2019

Date of pronouncement

12-02-2019

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the assessee relate to the assessment years 2011-12 and 2012-13. Since common issue is raised in both the appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

**A.Y. 2011-12 :**

2. Ground No.1, being the only effective ground, for the A.Y. 20-11-12 reads as under :

*“1. In the facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in confirming the disallowance of Rs.97,57,794.00 made by the learned Assessing Officer on account of loss on valuation of securities. The said disallowance being bad in law, patently illegal, arbitrary, perverse and devoid of merits the same may please be deleted and the claim of the appellant bank may please be accepted.”*

3. Briefly stated, the facts of the case are that the assessee filed its return declaring total income of Rs.14.68 crore and odd which was subsequently revised to Nil income. The Assessing Officer (AO) observed that the assessee had made adjustment of Rs.97,57,794/- in the revised return on account of valuation of securities. It was noticed by the AO that the loss so claimed was not accounted for in the books of account. Since the assessee adopted a different method of valuation of securities for income-tax purposes as well as for declaring in the final accounts, the AO held that such a system, resulting into showing of such a loss, was irregular and hence not permissible. On being called upon to explain the reasons for such a change in the method of valuation of securities, the assessee submitted that a change was effected in the method of valuation of securities during the year and it was consistently followed thereafter. In support of its contention, the assessee relied on certain decisions. Not convinced, the AO made an

addition of Rs.97,57,794/- in the computation of total income with the remarks “Adjustment on valuation”. No relief was allowed in the first appeal, against which the assessee has approached the Tribunal.

4. We have heard both the sides and gone through the material available on record. The first objection by the AO was that the assessee could not have claimed deduction *de hors* routing it through the books of account and the resultant Profit and loss account. In our considered opinion, there is no merit in the view point of the Department in view of the judgment of Hon’ble Supreme Court in the case of *Kedarnath Jute Manufacturing Company Vs. CIT (1971) 82 ITR 363(SC)*. In that case, some liability on account of sales tax arose which was not allowed as deduction by the AO on the ground that the assessee had denied its liability to pay the amount and had not made provision for such an amount in its books of account. This view came to be echoed by the Hon’ble High Court. When the matter came before the Hon’ble Supreme Court, their Lordships observed that “if an assessee under some misapprehension or mistake fails to make an entry in the books of account and although, under the law, a deduction

must be allowed by the ITO”, the assessee will not be debarred from such deduction. It was further held that “whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights *nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter*”. It is, therefore, palpable from the *ratio decidendi* laid down in this case that recording or not recording of any transaction in the books of account cannot be a decisive test for allowing or not allowing a deduction. If an assessee is otherwise entitled the deduction, the same has to be allowed, subject to contrary provisions, if any, even if it was not properly reflected in the books of account. We, therefore, do not countenance the view taken by the authorities below on this score.

5. Having crossed this hurdle, the next question is whether the assessee is entitled, as per law, to claim deduction by valuing its securities at “cost or market price, whichever is less”. Factual matrix is that the assessee originally valued its securities as per the method suggested by the RBI. However, later on, such valuation was revised to be in accordance with

the method : “cost or market price, whichever is less”. In the case of a bank, securities of the nature as held by the assessee in the extant case are in the nature of stock in trade. It is an established principle of law that stock can be lawfully valued under the method: “Cost or market price, whichever is less”. The Hon’ble Supreme Court in *Chainrup Sampatram Vs. CIT (1953) 24 ITR 481 (SC)* has laid down this principle which has been scrupulously followed in numerous judgments. In view of the above *ratio* flowing from *Chainrup Sampatram (supra)*, we hold that the assessee was entitled to value its securities under the method : “Cost or market price, whichever is less”. It is trite law that if a method of valuation has been changed from one recognized method to another recognized method, then such a change cannot be rejected if it is consistently followed. Nothing has been brought on record to demonstrate that the new method of valuation was not consistently followed by the assessee. Ergo, we do not see any embargo in the assessee switching over to the new method of valuation of securities, “Cost of market price, whichever is less”.

6. Now comes to quantum of the amount of loss claimed by the assessee under the new method of valuation of securities. It

is seen from the assessment order that the AO has made an addition of Rs.97.57 lakh on account of “Adjustment on valuation”. Even the ground raised by the assessee, as reproduced above, also says that the loss of Rs.97.57 lakh occurred on account of loss on valuation of securities. On being called upon to explain how the loss of Rs.97.57 lakh was computed, the ld. AR submitted that the amount of Rs.97.57 lakh was, in fact, loss after making several adjustments in the computation of total income. He could not specifically point out as to how this loss was computed. Similar was the position with the ld. DR as well. In the absence of any clarity on the computation of amount of loss arising due to change in the valuation of securities under the new method of “cost or market price, whichever is less”, we set-aside the impugned order and remit the matter to the file of AO for determining the amount of loss arising by the application of method “cost of market price, whichever is less” to the securities held by the assessee bank as stock in trade. It is only after determining such a loss on valuation of securities that the ultimate figure of loss will be determined. Needless to say, the AO will give a reasonable opportunity of hearing to the assessee.

7. Before parting with the matter, we would like to clarify on an issue concerned with the change in the method of valuation of securities. On a specific query, the Id. AR submitted that the assessee was earlier valuing such securities as per a method prescribed by the RBI, resulting into some loss to be amortized over certain number of coming years. Once we have held that the new method of valuation has to be followed, which would account for loss on decline in the market value of securities in the concerned year itself, there can be no rationale in continuing to allow losses in subsequent years under the old method of valuation of securities as per RBI, which admittedly resulted into amortization of loss in some subsequent years. The AO is directed to examine this aspect also, which is connected with the determination of loss on valuation of securities under the new method of Cost or market price, whichever is less. It should be ensured that the assessee does not get double deduction.

8. Factual matrix for the A.Y. 2012-13 is *mutatis mutandis* similar to that of the preceding year except for the amount of disallowance of Rs.5,35,47,228/- made by the AO and sustained in the first appeal. Following the view taken

hereinabove, we set-aside the impugned order and direct the AO to determine the issue as ordered *supra*.

9. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 12<sup>th</sup> February, 2019.

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Sd/-  
(R.S.SYAL)  
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 12<sup>th</sup> February, 2019  
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /  
The CIT (Appeals)-2, Pune
4. The Pr.CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR  
'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune



		Date	
1.	Draft dictated on	11-02-2019	Sr.PS
2.	Draft placed before author	11-02-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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