

Cit Vs. Bank of Baroda

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Court : Mumbai

Decided On : Mar-12-2003

Reported in : [2003]129TAXMAN716(Bom)

Appeal No. : IT Reference No. 353 of 1998 12 March 2003

Appellant : Cit

Respondent : Bank of Baroda

Advocate for Pet/Ap. : R.V. Desai and P.S. Jetly, *for the Revenue* P.L Pardiwala and Mrs. J.N. Shah, *for the Assessee*

Judgement :

S.H. Kapadia, J.

For assessment year 1982-83, the Tribunal has referred to following question for our opinion under section 256(1) of the Income Tax Act at the instance of the department :

'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?'

Facts

2. Assessee is a Nationalised Bank. 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 investments at cost or market value whichever was lower. During the year of account, depreciation with regard to securities held by the assessee was to the tune of Rs. 11,82,35,007. The assessee-bank claimed deduction. This was disallowed by the Income Tax Officer. The assessee-bank went in appeal to the Commissioner (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 assessee carries on business as a banking company. This order of Commissioner (Appeals) was confirmed by the Tribunal. Therefore, the department has come by way of this reference.

Argument's

3. Mr. R.V. Desai, learned senior counsel appearing on behalf of the department contended that the securities were not held as stock in trade. That, they were held as investments and, consequently, the assessee-bank was not entitled to value such Investments on the principle of Cost or Market Value whichever was lower. It was argued that the securities were held by the assessee-bank as permanent investments.

Findings

4. We do not find any merit in this argument. In the case of UCO Bank v. CIT (1999) 240 ITR 355, the assessee-bank had submitted return for assessment year 1982-83 contending that there was a notional loss of Rs. 7.45 crores on account of closing stock of securities valued at market price which fell below the cost. The Income Tax Officer accepted the said loss vide assessment order dated 19-3-1985. However, the Commissioner intervened by order dated 9-3-1987 under section 263 of the Income Tax Act. By the said order, the Commissioner set aside the order of assessment holding that the assessee-bank had no right to calculate profit or loss arising out of Investment Trading Account as the said account did not form part of final account of the assessee-bank. That, since Investment Trading

Account was not incorporated in the final account, the assessee-bank had no right to calculate profit or loss arising out of Investment Trading Account. In that matter, the assessee-bank was following Mercantile System of Accounting and the loss claimed by the assessee was not debited in the profit and loss account. Against the order of the Commissioner under section 263 of the Act, the assessee-bank preferred an appeal to the Tribunal which took the view that the assessee had claimed the loss by following the same method which it was following for last 30 years. Consequently, the order passed by the Commissioner under section 263 was set aside. Against the said order of the Tribunal, two questions were referred for opinion to the High Court. Answering the said questions, the High Court observed that the assessee-bank had not valued the stock of shares and securities in its books of account in accordance with the method of 'Cost or Market Price whichever is lower'; if this method was not followed in preparing Investment Trading Account, then the assessee-bank cannot claim notional loss/notional method of stock valuation for computing income. The High Court took the view that the book results could be rejected by the Income Tax Officer under section 145(1) of the Income Tax Act if the method adopted by the assessee-bank did not disclose a proper and true income. That, merely because in the past the system followed by the assessee-bank was not questioned was no ground to say that it should be accepted for all times. Consequently, the matter came before the Supreme Court. The Apex Court came to the conclusion that preparation of balance sheet by the assessee-bank was governed by Banking Regulation Act, 1949. That, under the Third Schedule to that Act, balance sheet and profit & loss account have been prescribed. That, in the prescribed form, there is a Column of 'Property & Assets'. Item 4 provides for Investments (Mode of Valuation i.e., Cost or Market Value). Note (f) in Column 4 states that where the value of investments was higher than the market value, the market value shall be shown separately. Further, under section 53 of the Banking Regulation Act, 1949, the Central Government on recommendation of RBI had issued a Notification for banks in respect of assessments to the effect that Note (f) shall not apply to UCO Bank in respect of balance sheet. On the basis of the said Notification, UCO Bank did not mention the market value of the investments. In the circumstances, the Supreme Court came to the conclusion that from the form of prescribed balance sheet, it

was evident that Nationalised Banks were directed to put the value of shares and securities at cost and if the market value was lower than the cost then, it was to be shown separately in the brackets. Before the Supreme Court, however, it was argued on behalf of the department that the balance sheet/audited accounts maintained on the basis of investment in shares at Cost would not disclose the real profit/loss of the bank in view of the fact that depreciation in the value of the shares or fall in the market price of shares and securities was not provided for in the audited accounts. On the other hand, it was argued on behalf of the assessee-bank that even though in the balance sheet the market price of shares and securities was not mentioned yet, for determining the real income of the assessee, the said price was required to be taken into account. That, for last 30 years, the assessee-bank was submitting income-tax returns after taking into account the market price of such shares and securities which was accepted by the department. It was submitted that not making proper entries in the balance sheet could hardly be a ground for not assessing the real income. The Supreme Court came to the conclusion on the above arguments that where the market value of shares and securities had fallen below the cost before the date of valuation and where on the date of valuation, the market value is less than the actual cost then the assessee was entitled to value the articles at market price and the assessee was entitled to claim the loss which the assessee would probably incur at the time of sale of shares and securities. That, whichever method the assessee adopts, it should disclose the true picture of profits and gains. That, for determining the real income, the entries in the balance sheet were required to be maintained in the statutory form. However, such entries in the balance sheet were not decisive or conclusive. In such cases, it was open to the Income Tax Officer and the assessee to ascertain true and proper income while submitting income-tax returns. That, for valuing the closing stock, it was open to the assessee to value the stock at cost or market price whichever is lower. That, the assessee was valuing the stock-in-trade at cost for the purposes of statutory balance sheet but, for the purposes of income-tax return, the assessee was valuing the stock-in-trade at cost or market value whichever was lower and that practice was accepted by the department for 30 years. Consequently, the Supreme Court allowed the appeal filed by UCO Bank. In our view, the judgment of the Supreme Court in UCO Bank's case (supra)

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 UCO Bank (supra), 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 shares and securities were valued at cost on the asset side.

5. For the reasons given hereinabove, we answer the above quoted question in the affirmative i.e., in favour of the assessee-bank and against the department.

6. Accordingly, the reference is disposed of with no order as to costs.

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