®

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 06TH DAY OF JUNE 2012

PRESENT

THE HON'BLE MR.JUSTICE D.V.SHYLENDRA KUMAR

AND

THE HON'BLE MR. JUSTICE B.MANOHAR

ITA No.2886/2005

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
CR BUILDING,
QUEENS ROAD,
BANGALORE.

2. THE DEPUTY COMMISSIONER OF INCOME TAX
HEAD QUARTERS II
BANGALORE. ...APPELLANTS

(BY SRI.M.V.SESHACHALA & SRI.K V.ARAVIND, ADVS)

AND:

ING VYSYA BANK LTD
NO.72, ST. MARKS ROAD,
BANGALORE 1. ...RESPONDENT

(BY SRI.S.PARTHASARATHI, ADV)

I.T.A filed U/S.260-A of I.T Act, 1961 arising out of order dated 10-03-2005 passed in ITA No.382/Bang/1997 for the Assessment Year 1993-94, praying that this Hon'ble Court may be pleased to formulate the substantial questions of law stated therein and allow the appeal and set aside the orders passed by the ITAT, Bangalore in ITA No.382/Bang/1997 dated 10-03-2005 and confirm the order of the Appellate Commissioner confirming the order passed by the Deputy Commissioner of Income Tax, Headquarters-II, Bangalore.

This appeal coming on for hearing this day, *SHYLENDRA KUMAR J.*, delivered the following:

## JUDGMENT

This appeal under Section 260-A of the Income Tax Act, 1961 ('the Act' for short) is by the Revenue, questioning the correctness of the order dated 10th March 2005 passed by the Income Tax Appellate Tribunal, Bangalore Bench in ITA No.382 (Bang)/1997.

2. In this appeal, the Revenue has urged many questions of law for our consideration and in terms of the order dated 21-8-2006, while admitting the appeal,

the following questions of law had been framed for examination as arising out of the order of the Tribunal:

> *(1) Whether, the Tribunal was correct in holding that in proceeding to hold that loss of Rs.1,09,10,252/- on revaluation of security in an allowable deduction.?*
>
> *(2) Whether, the Tribunal was correct in holding that the conclusion drawn by the Assessing Officer that the securities held by the assessee were Government Security and as per RBI introduction they had to be held for a period of more than 10-15 years as permanent assets which would assume the character of a capital asset over which the question of allowing law an account of revaluation of capital assets did not arise?*
>
> *(3) Whether, the Tribunal was correct in holding that the Assessing Officer had correctly granted relief in respect of bad debts claim of a sum of Rs.1,96,71,030/- and the balance claim of Rs.5,24,74,740/- had been correctly disallowed as the requirement of Section 36(1)(vii) and 36(1)(vii-a) had not been complied with by the assessee.*
>
> *(4) Whether the Tribunal was correct in holding that the Assessing Officer had correctly disallowed the claim made by the assessee regarding entertainment expenditure of Rs.16,21,016/- on the basis that 50% should be treated a expenditure relating to staff and cannot be brought*

*under the rigor of section 37(2) of the Act as there was no evidence produced to support such a claim nor was a claim in this regard was made in the return of income.*

*(5) Whether, the Tribunal was correct in holding that the judgment of Can Bank Financial Services was applicable to the facts of the present case when the Assessing Officer had held that the deduction under Section 80M was allowable in respect of net dividend income after deducting expenses relating to such income and not on the gross dividend as claimed by the assessee.*

3. The Assessee is a public limited Banking Company carrying on the activities of banking and the assessment year is 1993-94. On filing of the returns of the company, the Assessing Officer has completed the assessment, after issuance of notice to the Assessee under Section 143 (2) of the Act as the Assessing Officer, prima facie found that many deductions, exemptions etc., as by way of expenditure or otherwise claimed by the Assessee were not admissible.

4. One such claim for deduction was the claim of the assessee for a sum of Rs.1,09,10,252/- to be allowed as loss, in the wake of revaluation of securities classified as permanent assets. The assessee having valued its securities for investments which the assessee had held for the purpose of complying with the RBI instructions that a minimum percentage of its total deposits to be invested in such securities, in the wake of deposits that it had received from its customers as part of its business activity. The assessee had indicated such investment as a permanent asset and had claimed that it was held as stock-in-trade, being a part of the trading asset.

5. The assessee had claimed that though none of these securities had been actually transferred resulting in a loss, on sales, the loss was being computed on the premise that on valuing securities at market value on the last date of the financial year, the market value of

the assets having gone down, the assessee had incurred a loss of Rs.1,09,10,252/- as the market value of the securities was less than the cost of acquisition and the security being held as stock-in-trade, the assessee is entitled to evaluate the stocks at the market value and therefore can claim it as a business loss, which in fact was the practice that the assessee had been following for the past several years.

6. The assessee in fact so reflected the loss in its Profit and Loss Account purporting to be on the basis of the method of accounting it had followed and the manner of making up its profits, as had been done for the past several years. The Assessing Officer having rejected the claim of the assessee on examination of the nature of holdings which were undisputedly in the form of investments in securities. The assessee itself having described some part of these investments in securities (70%) as permanent investment and balance 30% as

current investments and in the wake of legal position as prevailed in the clarification issued by the Board Circular No.665/1992-93 and having found the assets in the nature of investments, any securities held by the assessee cannot be termed as stock-in-trade as it was an investment to fulfill the RBI Instructions and Guidelines and therefore held it as investments and not as part of the business asset of the assessee, valued for trading. Nevertheless, the claim of the assessee had been allowed to an extent of 30% based on the RBI Circular relating to the investments in securities, allowing a bank to treat 30% of the investments as current investment whereas 70% of the investment should be in the nature of permanent investments. Such disallowing became contentious issue against which the assessee carried the matter to the CIT (Appeals), but without much success on this aspect, as the view of the assessing authority was affirmed by the CIT (Appeals) and dismissed the appeal on this aspect.

7. But the assessee carried the matter further to the Tribunal in second appeal. The Tribunal in terms of the order dated 10-3-2005 held that the view taken by the Assessing Officer is not sustainable in the wake of the view the Tribunal had expressed in the case of DCIT vs Karnataka Bank Limited rendered on 27-5-2004 in ITA No 50/Bang/97 decided by the tribunal. The tribunal was of the opinion that it's earlier view should be followed in the case of the assessee also and reversed the view of the Assessing Officer as well as the CIT (Appeals) and held that the assessee is entitled to claim the amount of Rs.1,09,10,252/- as business loss, attributable to fluctuation in the valuation of stocks which it had held and the value of securities having gone down in the market, as valued on the last day of the financial year. The Revenue is in appeal on this aspect and questions 1 and 2 relate to this issue.

8. The Assessing Officer while concluding the assessment found that the assessee's claim for writing off bad debts to the extent of Rs.7,21,45,770/- was not justified to the entire extent that the situation was one attracting the provisions of Section 36(1)(vii-a) of the Act and was not a situation where the claim can be examined only in the light of the provisions of Section 36(1)(vii) of the Act and therefore examined the claim for bad debts from the angle of applicability of Section 36(1)(vii-a) of the Act. On noticing that the entitlement for claiming deduction towards bad debts, can only be in respect of the amount which is in excess of the provision already made and that the assessee having already made provision for doubtful debts and there being a credit balance in that account, where such a provision had been made for, the assessee could claim deduction only to the extent of Rs.5,24,74,740/-.

9. The assessing authority opined that the assessee can claim deduction by way of bad debts for the accounting period relevant for the assessment year only an amount in excess and holding such amount in excess in respect of the claim of Rs.5,24,74,740/- was reserved. This issue again became a contentious issue and the assessee had raised this issue also in its appeal before the CIT (Appeals) and the CIT (Appeals) thought it proper to remand this aspect to the Assessing Officer for requantification.

10. The assessee has nevertheless carried this issue before the Appellate Tribunal. The Tribunal being of the opinion that the assessee was entitled for deduction of the claim in respect of the amount eligible under Section 36(1)(vii) holding that the provisions of Section 36(1)(vii) and 36(1)(vii-A) operates in different fields and by reversing the view of the Assessing Officer and CIT (Appeals) allowing the claim in full in favour of the

assessee as one, to which the assessee was entitled to under Section 36(1)(vii). Therefore, on this aspect, the Revenue is in appeal before us raising the 3rd question for examination.

11. Yet another claim which became contentious before the Assessing Officer was relating to the amount that can be claimed as a part of its business expenditure which was in the nature of expenditure incurred or spent in respect of the employees who had accompanied the guests and visitors of the assessee-Organization for whom the assessee had incurred expenditure in the nature of entertainment expenditure which is defined in Explanation (i) of sub-Section (2) of Section 37 of the Act. The question became contentious as in terms of the provisions of Section 37(2) of the Act any expenditure in the nature of entertainment expenditure is allowed as a part of business expenditure in full up to Rs.10,000/- and thereafter only 50% of the balance. If

the expenditure spent by the assessee-Bank in respect of the expenses incurred on its employees who had accompanied the guests is also to be taken as entertainment expenditure, the restriction in this statutory provision operates otherwise the assessee can claim the entire expenditure by way of deduction in terms of Section 37(1) of the Act.

12. The Appellate Authority having remanded the question to the Assessing Officer for reexamination particularly on the aspect of expenditure incurred by the company on the employees who had accompanied the guests and delegates, the assessee having carried the matter further to the Tribunal on this question also and the Tribunal having opined in favour of the assessee, the Revenue has brought up, this question also for examination.

13. Yet another question that became contenticus before the Assessing Officer was relating to the entitlement of deduction the assessee can claim under the provisions of Section 80M of the Act. The Assessing Officer having restricted the deduction having disallowed any amount equal to 5% of the deduction as expenditure incurred by the assessee for the purpose of earning dividend income eligible for deduction under Section 80M. The matter had been carried further but without success before the Appellate Commissioner and with success before the Tribunal. It is because of this view taken by the Tribunal, the Revenue has raised the question of law as indicated above relating to this aspect.

14. We have heard Sri.M.V.Seshachala, learned Senior Standing Counsel appearing for the Revenue and Sri.Parthasarathy, learned counsel appearing for the assessee in great detail.

15. Though several questions have been posed for our answer, most contentious question is one relating to the loss claimed by the assessee due to the valuation of the securities for investments on the last date of financial year and the difference between cost on acquisition and the market value on this date. With the market value having gone down, assessee claimed the difference as a loss which totalled to a sum of Rs.1,09,10,252.

16. On this aspect of the matter, Sri.M.V.Seshachala, Senior Standing Counsel for Revenue has taken us through Board Circulars that guided the assessee on this aspect and has submitted that the assessee admittedly had held the securities as part of its investments in terms of the RBI instructions that the Banking Institution was required to make investments up to an amount equal to stipulated percentage of its deposits that such investments were mandatory and

statutory requirements on any banking institution and RBI had issued guidelines and clarification on this aspect. But even the assessee had in the return of income indicated the investments as permanent investments and submits that any asset held which is in the nature of an investment can never be termed as stock-in-trade as a stock-in-trade is held as part of trading asset and not one which is retained as investments and therefore, submits that on the very admission of the assessee the investments in securities can never part-take the character of stock-in-trade and therefore the question of valuing such stocks at the end of the accounting period for the purpose of making profit and loss account and determining the profit or loss does not arise that exercise is in futility and therefore the stand of the assessee on this aspect is not tenable. Submits that the Assessing Officer had taken note of a board circular which was referred and relied upon by the assessee and also that 30% of such

investment can be held as current investment had allowed the loss up to 30% of the claim and 70% claim was disallowed holding that the investment was in the nature of permanent investment and therefore the assessee could not characterize that investment also as forming part of its stock-in-trade and to that extent it was disallowed; that such disallowance is not only fully justified but also a finding of fact we had referred to on principle of law and also the investment does not part-take the character of stock-in-trade. Even in trading and business practices long lasting investment if at all is in the nature of capital asset and not a stock-in-trade as has been claimed by the assessee. Therefore submitted that the Tribunal while not recording a finding on this aspect in the assessee's case could not have modified or reversed the view taken by the Assessing Officer as affirmed by the First Appellate Authority, only by following up and applying the ruling which it had rendered in the case of Karnataka Bank

which was totally inapplicable or was not the view which held the field in the wake of subsequent development. Submits that the tribunal having applied that as a reasoning for reversing the finding of the two lower authorities, the view of the Tribunal on this aspect is not sustainable being a perverse finding and does calls for interference and the question on this aspect is to be answered in favour of the Revenue and against the assessee.

17. To make good his submission, Mr.Seshachala has taken us through the history of Circulars relating to the investments in securities by Banking Companies governed by Banking Regulation Act and the RBI Act and has pointed out that even the claim of the assessee that it had all along treated all such investments as part of its stock-in-trade in itself was based on an earlier Board Circular No.599 dated 24th April 1991. That for the relevant assessment year i.e. for the period from

01-04-1992 to 31-3-1993, this Board Circular was no more applicable in the wake of two subsequent Board Circulars namely Circular No.610 dated 31-7-1991 whereby the Board purporting to act on the law enunciated by the Hon'ble Supreme Court in the case of ***VIJAYA BANK LIMITED V/S. CIT (ADDL.)*** reported in (1991)187 ITR 541, had withdrawn the earlier Board Circular No.599 dated 24-4-1991, but later on the overwhelming representation from the Indian Banks Association and many other Banking Companies realizing that not only the judgment of the Hon'ble Supreme Court in the case of Vijaya Bank Limited did not govern the question in issue but also that the earlier Board Circular No.599/1991 was not either on proper lines or one that could be generalized in respect of all investments by Banking Companies/institutions for fulfilling the RBI regulations and as an investment which is to be held as part of the trading asset which is characterized as stock-in-trade, had very clearly

clarified under the circular of the year 1993 that as to whether the Banking Company is holding an investment in any security as part of its investments to fulfill the requirements of the Banking Regulation Act and the Rules framed thereunder or as to whether the investment has to be held as stock-in-trade is a question of fact to be decided by the Assessing Authority in each case and therefore having left the matter to the Assessing Authority and the Assessing Authority having shown the awareness in this aspect and having examined the matter on this aspect and also on finding that the assessee itself has described that 70% of its investments was in the nature of permanent investment and having opined that it is definitely not in the nature of a security or an asset held by way of stock-in-trade, this view of the Assessing Authority affirmed by the Appellate Authority could not have been disturbed by the Tribunal that too by applying a principle or ruling which it had rendered in the case of Karnataka Bank on

the basis of the earlier Board Circular and as was the practice, that was being followed by the Banking companies based on the earlier Board circulars.

18. Submission is that the Tribunal has committed clear error in law in importing its decision in the case of Karnataka Bank to decide the present case; that on the finding recorded by the first two authorities it is clear that investments were not held as stock-in-trade and therefore, the Tribunal's view is required to be corrected.

19. For the sake of convenience we are extracting the Board Circular No.665 dated 5-10-1993 which reads as under:

> *1. By Circular No.599, dt. 24.4.1991 (see Clarification 2), it was clarified that securities held by banks must be regarded as their stock-in-trade and the claim of loss, if debited in the books of account, should be given the same treatment as it normally given to the stock-in-trade. It was also clarified that the interest paid for broken period on the*

*purchase of securities must be regarded as revenue payment and allowed accordingly.*

*2. Consequent upon the judgment of the Supreme Court in the case of Vijaya Bank Ltd. v. CIT (1991)187 ITR 541, the above circular was withdrawn by the issue of Circular No.610, dt. 31.7.1991 (See Clarification 1). There have been representations from the Indian Banks' Association to the effect that the Supreme Court in the case of Vijaya Bank Ltd. was concerned only with the claim for broken period interest and did not decide the issue whether the securities constituted stock-in-trade or investment. It has therefore been represented that the withdrawal of Circular No.599, dt. 24.4.1991 in toto was not called for.*

*3. The Board has reconsidered the treatment to be accorded to securities held by banks. In the case of Vijaya Bank Ltd. (supra), the Supreme Court considered the issue whether, in a case where the assessee purchases securities at a price determined with reference to their actual value as well as the interest accrued thereon till the date of purchase, the entire price paid for them would be in the nature of capital outlay or whether the interest portion could be claimed as a revenue expenditure. It was in this context that the Supreme Court held that whatever was the consideration which prompted the assessee to purchase the securities, the price paid for them was in the nature of capital outlay and no part of it could be set off as expenditure against income accruing on those securities. The Court was not directly*

> *concerned with the issue whether the securities from part of stock-in-trade or capital assets.*
>
> *4. The question whether a particular item of investment in securities constituted stock-in-trade or a capital asset is a question of fact. In fact, the banks are generally governed by the instructions of the Reserve Bank of India from time to time with regard to the classification of assets and also the accounting standards for investments. The Board has, therefore, decided that the Assessing Officers should determine on the facts and circumstances of each case as to whether any particular security constitutes stock-in-trade or investment taking into account the guidelines issued by the Reserve Bank of India in this regard from time to time.*

20. Joining the issue on this aspect, Mr.Parthasarathy, learned counsel has vehemently submitted that the assessee had all along followed the practice of making up its account on mercantile system of accounting that it had all along treated the investments in securities as part of its trading asset and the entire investment was taken as stock-in-trade which had been done uniformly following the practice of valuing such assets held and claimed by way of stock-in-trade for every year and had

valued the same at market value for the purpose of making its profit and loss account and therefore, there was no occasion for the Assessing Officer or Appellate Authority to have taken a different view for the assessment year in question. Mr.Parthasarathy, submits that having regard to its earlier claim and the practice followed by the assessee having been allowed and recognised by the Revenue in respect of earlier years, there was absolutely no occasion for the Assessing Authority to have taken a different view, that even assuming for argument's sake, the Tribunal was not justified in placing reliance on its earlier decision in the case of Karnataka Bank for reversing the orders of the assessing authority and the first appellate authority, the view taken by the Tribunal to hold that the amount should be held as a part of business loss by revaluing the stock-in-trade on the last date of financial/accounting year, is a plausible view and therefore there is no need to disturb the finding of the

Tribunal and the appeal of the Revenue has to be dismissed on this aspect answering the question against the Revenue and in favour of the assessee.

21. In the alternative, Mr.Parthasarathy has urged that the view taken by the Tribunal is without going into the factual aspect and even if it had wrongly applied the rule in the case of assessee, at best, the matter warrants remand to the Assessing Authority for reassessment and if the finding of the Tribunal on this aspect is set aside, then the matter will have to be remanded to the Tribunal for recording a finding etc.

22. We have bestowed our attention to the submissions made at the Bar and have also examined the legal position in the wake of the statutory provisions of the Board Circulars on these aspects.

23. So far as applicability of the provisions of RBI Act and the directions issued by the RBI in the matter of

computation of tax liability and taxable income under the provisions of Income Tax Act is concerned, our attention is drawn to paragraph 32 of the judgment of the Hon'ble Supreme Court in the case of ***SOUTHERN TECHNOLOGIES LTD vs JOINT COMMISSIONER OF INCOME TAX*** reported in 320 ITR 577, which reads as under:

> *32. RBI Directions 1998 have been issued under s. 45JA of RBI Act. Under that section, power is given to RBI to enact a regulatory framework involving prescription of prudential norms for NBFCs which are deposit taking to ensure that NBFCs function on sound and healthy lines. The primary object of the said 1998 Directions is prudence, transparency and disclosure. Sec. 45JA comes under Chapter IIIB which deals with provisions relating to financial institutions, and to non-banking institutions receiving deposits from the public. The said 1998 Directions touch various aspects such as income recognition; asset classification; provisioning, etc. As stated above, basis of the 1998 Directions is that anticipated losses must be taken into account but expected income need not be taken note of. Therefore, these Directions ensure cash liquidity for NBFCs which are now required to state true and correct profits, without projecting inflated profits. Therefore, in our view, RBI Directions 1998 deal only with presentation of NPA*

> *provisions in the balance sheet of an NBFC. It has nothing to do with the computation or taxability of the provisions for NPA under the IT Act.*

It is submitted that it is not different in the matter of examining the tax liability or computing the income of the assessee and as to whether an asset is held as stock-in-trade or otherwise is a question that has to be answered independently than from any RBI guidelines relating to the method and manner of an investment in securities and relaxation allowed by the RBI to the extent of 30% as investments being treated as current investment on this aspect. Though Sri.Parthasarathy learned counsel for the assessee had submitted that the assessee had been permitted by the RBI to value all its investments and not merely 30% of the investments treated as current investments, for the purpose of claiming loss if any, or computing their profits if any on valuing such investments at the end of the accounting period, we are of the view and as pointed by Sri.Seshachala that instructions regarding investments

to be made by the Banking Company and the relaxation allowed by the RBI in respect of the manner of investment and the compulsion on the mode of investment is a matter which is relevant only for the purpose of RBI Act and the Banking Regulations Act and that it cannot have a bearing or can control the operation of the provisions of the Income Tax Act.

24. In fact we are of the view that the Board Circular No.665 dated 5-10-1993 has now viewed the position in its proper perspective. The question as to whether an asset is a trading asset or is an asset in the nature of a lasting asset investment held as part of investment made by the Banking Company to fulfill its obligations under the Regulatory Provisions of law or whether it is a part of trading asset, and therefore has became a part of stock-in-trade is a question which has to be answered in each case and not either based on the RBI Circular or

Guidelines or even a Circular issued by the Board in general.

25. In the present case, even as per the learned counsel for the assessee, the assessee has already been allowed the deduction to the extent of 30% of the loss and the claim is only in respect of the balance 70% and the issue is being carried further.

26. While 30% of the amount claimed as loss is allowed by the assessing authority itself and this amount is not in issue before us and therefore we have not opined anything on the same. The issue raised is on the rejection of the claim for deductions as a business loss in respect of balance 70% and on the above examination, we find that the amount insofar as 70% of the investment is concerned, even as per the assessee it is held as permanent investment and may be because it is required to be held so by the assessee- Bank in terms

of the instructions and guidelines issued by the RBI and to fulfill the statutory requirement under the RBI Act read with Banking Regulation Act.

27. In fact, we are of the view that the Assessing Officer has not merely recorded the finding of fact on this aspect, but also very correctly, as in our considered opinion, no assessee can claim an investment of lasting nature, to be part of its trading asset or as an asset held by way of stock-in-trade. While it is possible to convert any long term asset as part of a trading asset and the Income Tax Act also recognizes the same, it also deals with the consequences of such declaration and it is because of this reasons, Mr.Seshachala had drawn our attention to the definition of Capital asset under Section 2(14) and transfer under Section 2(47) of the Act.

28. Chambers 21st Century Dictionary, defines Stock in Trade as under:

> ***a*** *something that is seen as fundamental to a particular trade or activity;* ***b*** *as adj cliched – a story with stock-in-trade sentiments.* ***2*** *all the goods that a shopkeeper, etc. has for sale.*

Blacks Law Dictionary, sixth edition, defines stock-in-trade as under:

> *The inventory carried by a retail business for sale in the ordinary course of business. Also, the tools and equipment owned and used by a tradesman.*

Law Lexicon by Sri P Ramanatha Aiyar, second edition, stock in trade is defined as under:

> *Comprises all such chattels as are acquired for the purpose of being sold, or let to hire, in a person's trade.*

29. Be that as it may, we are of the view that on the Assessee's own declaration that it was permanent investment, the Tribunal could not have held otherwise as lasting asset and definitely cannot assume the character of Stock in trade.

30. While any investment in security can definitely become part of the stock-in-trade of a banking institution, no relevant question in the context of the present examination will be as to the nature of the security and for what purpose and in what manner the security was held by the assessee-bank. Even though Sri Parthasarathy, learned counsel for the assessee, has contended that the bank has all along been treating the entire investment in security as stock-in-trade and even otherwise the RBI itself not only had notified the 30% of the securities required to be held by a banking institution for complying with the RBI guidelines/regulations can be in current investment, the fact that the bank had treated all its investments in securities as stock-in-trade and further fact that the RBI had accorded permission to the bank to value such investment should be taken as a relevant and clinching circumstance to accept the stand of the assessee that securities were stock-in-trade, we are unable to accept

this submission, only for the reason that any and every asset held by an assessee does not necessarily become stock-in-trade, it is only such merchandize of a businessman which is ready for sale, and is held for sale, that acquires the characteristic of stock-in-trade.

31. A merchandize or goods or in the present situation, security does not get the character of stock-in-trade merely because it is so designated, but a security can acquire the character of stock-in-trade if it is so held as part of trading stock and the assessee acts as such. In respect of securities which are held by way of permanent investment in securities by the assessee-bank as part of the requirement of the law, then such securities is not and cannot be either be construed or accepted as an investment in the form of security ready for sale. Stipulation on the bank is that it should be held as an investment and as an investment in some government securities or other securities. It is,

therefore, held that all holdings of a banking institution in the form of investment in securities does not automatically acquire the characteristic of stock-in-trade. As to whether a particular investment in any security is in the nature of stock-in-trade or otherwise is a question which has to be examined in each case having regard to the nature of transactions, manner of holding and if it is curtailed or regulated by any other external or outside compulsions other than the volition of the assessee. In the instant case we are of the view that on the findings recorded by the assessing officer and as confirmed by the appellate commissioner, the tribunal could not and should not have upset such a finding by drawing a comparison to a situation prevailing in respect of some other bank and the view of the tribunal in that case was based on the board circular which had held the field at the relevant point of time. Even otherwise, we find in the facts and circumstances, this is a clear case of investment in the

securities, which cannot be characterized as stock-in-trade at all, as even as per the admission of the assessee and as per the relaxation, assuming it has any relevance, given by RBI, it can only be 30% of the investment which can be clothed with the character of stock-in-trade, as the assessee-bank had some freedom in exchanging such securities/ or any other form of security, it can be said that to this extent securities are available for sale, but the condition is that it again should be invested in any other security, so that requirement of investment in securities as per RBI guidelines/instructions is maintained by the bank. It is for this reason, we also reject the request of Sri Parthasarathy that the matter warrants remand to the tribunal for reexamination on this aspect of the matter. Accordingly, questions 1 and 2 are answered in the negative and in favour of the revenue.

***Re: Questions 3***

32. In so far as the question relating to the claim of the assessee towards bad debts is concerned, both Sri Seshachala, learned senior standing counsel for the revenue and Sri Parthasarathy, learned counsel for the assessee, have submitted that, the question has to be examined in the light of the judgment of the Supreme Court in the case of ***CATHOLIC SYRIAN BANK LTD vs COMMISSIONER OF INCOME TAX, THRISSUR [(2012) 343 ITR 270.*** Accordingly, we answer the question in the negative, set aside the finding of the tribunal on this aspect, but nevertheless, remand the matter to the assessing officer, to reexamine this question afresh in the wake of the law as declared by the Supreme Court in the case of ***CATHOLIC SYRIAN BANK LTD*** [supra] by applying the law as expounded by the Supreme Court to the facts of the assessee's case.

***Re: Questions 4***

33. This question relates to deduction claimed by the assessee by way of expenditure incurred on its employees who had accompanied the guests and delegates of the assessee-bank and as to whether it is to be allowed in full or the provision of Section 37(2) of the Act operates on it. Having examined the submissions made at the Bar and in particular having regard to the definition of the term 'entertainment' as indicated in explanation-1 to sub-section (2) of Section 37 of the Act, reading as under:

> ***Explanation 1*** *– For the purposes of this sub-section, "entertainment expenditure" includes –*
>
> *(i) the amount of any allowance in the nature of entertainment allowance paid by the assessee to any employee or other person after the 29th day of February, 1968;*
>
> *(ii) the amount of any expenditure in the nature of entertainment expenditure [not being expenditure incurred out of an allowance of the nature referred to in clause (i)] incurred after the 29th day of*

> *February, 1968, for the purposes of the business or profession of the assessee by any employee or other person.*

read with clause-3 reading as under:

> *(3) Notwithstanding anything contained in sub-section (1), any expenditure incurred by an assessee after the 31st day of March, 1964, on advertisement or on maintenance of any residential accommodation including any accommodation in the nature of a guest-house or in connection with travelling by an employee or any other person (including hotel expenses or allowances paid in connection with such travelling) shall be allowed only to the extent, and subject to such conditions, if any, as may be prescribed.*

We have to hold that any expenditure incurred by the employer which comes within the scope of this definition and not being an expenditure incurred towards its employees vis-à-vis any obligations or terms of employment, the expenditure inevitably partakes the character of entertainment expenditure and therefore the limitation stipulated in terms of Section 37(2) operates in allowing such an expenditure as deduction while computing the profits of the assessee. Therefore,

this question is answered in the negative and against the assessee.

***Re: Questions 5***

34. This question, relating to deduction that the assessee is entitled to in respect of the dividend income in terms of Section 80M of the Act and as to what amount is required to be deducted from the amount that qualifies for this deduction, in view of the fact that Section 80AA of the Act. This question is answered in favour of the assessee and against the revenue, for the reason that the revenue had not made out any case for deduction by demonstrating the actual expenditure incurred by the assessee for earning a dividend income and therefore just because Section 80AA of the Act provides for such deduction, deduction as applied by the assessing officer by resorting to best judgment, which was not justified and the tribunal was right in setting aside this part of the order of the assessing

authority and in directing entire deduction claimed by the assessee to be allowed under Section 80M of the Act is justified in law.

35. In the result, this appeal is allowed in part, questions are answered as indicated above and the assessing officer to give effect to the finding herein while recomputing the liability of the assessee for the assessment year in question.

Sd/-
JUDGE

Sd/-
JUDGE

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