2024 SCC OnLine SC 2877

In the Supreme Court of India

(BEFORE ABHAY S. OKA AND PANKAJ MITHAL, JJ.)

Civil Appeal Nos. 3291-3294 of 2009

Bank of Rajasthan Ltd. ... Appellant;

Versus

Commissioner of Income Tax ... Respondent.

With

Civil Appeal Nos. 11200-11201 of 2024

(Arising out of S.L.P. (C) Nos. 1445-1446 of 2021)

Civil Appeal No. 11202 of 2024

(Arising out of S.L.P. (C) No. 4843 of 2020)

Civil Appeal No. 11203 of 2024

(Arising out of S.L.P. (C) No. 7055 of 2021)

Civil Appeal No. 11204 of 2024

(Arising out of S.L.P. (C) No. 7404 of 2021)

Civil Appeal No. 11205 of 2024

(Arising out of S.L.P. (C) No. 15281 of 2021)

Civil Appeal No. 11196 of 2024

(Arising out of S.L.P. (C) No. 1686 of 2021)

Civil Appeal No. 11197 of 2024

(Arising out of S.L.P. (C) No. 1687 of 2021)

Civil Appeal No. 11198 of 2024

(Arising out of S.L.P. (C) No. 8968 of 2018)

Civil Appeal No. 11199 of 2024

(Arising out of S.L.P. (C) No. 24841 of 2019)

And

Civil Appeal No. 4755 of 2023

(Arising out of S.L.P. (C) No. 16299 of 2023)

Civil Appeal Nos. 3291-3294 of 2009, Civil Appeal Nos. 11200-11201 of 2024 (Arising out of S.L.P. (C) Nos. 1445-1446 of 2021), Civil Appeal No. 11202 of 2024 (Arising out of S.L.P. (C) No. 4843 of 2020), Civil Appeal No. 11203 of 2024 (Arising out of S.L.P. (C) No. 7055 of 2021), Civil Appeal No. 11204 of 2024 (Arising out of S.L.P. (C) No. 7404 of 2021), Civil Appeal No. 11205 of 2024 (Arising out of S.L.P. (C) No. 15281 of 2021), Civil Appeal No. 11196 of 2024 (Arising out of S.L.P. (C) No. 1686 of 2021), Civil Appeal No. 11197 of 2024 (Arising out of S.L.P. (C) No. 1687 of

2021), Civil Appeal No. 11198 of 2024 (Arising out of S.L.P. (C) No. 8968 of 2018), Civil Appeal No. 11199 of 2024 (Arising out of S.L.P. (C) No. 24841 of 2019) and Civil Appeal No. 4755 of 2023 (Arising out of S.L.P. (C) No. 16299 of 2023)

Decided on October 16, 2024

Advocates who appeared in this case :

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Mr. Sanjiv M Shah, Adv.

Mr. Sebat Kumar Deuria, Adv.

The Judgment of the Court was delivered by

ABHAY S. OKA, J.:— Leave granted in the Special Leave Petitions.

FACTUAL ASPECTS

2. The main issue in this group of appeals is about the treatment to be given to broken period interest. The question is whether a deduction of the broken period interest can be claimed. We must provide a brief background of how the issue arises.

3. A Scheduled Bank is governed by the provisions of the Banking Regulation Act, 1949 (for short, “the 1949 Act”). The 1949 Act, read with the guidelines of the Reserve Bank of India (for short, ‘RBI’),

requires Banks to purchase government securities to maintain the Statutory Liquidity Ratio (for short, 'SLR'). The guidelines dated 16th October 2000 issued by the RBI categorise the government securities into the following three categories : (a) Held to Maturity (HTM); (b) Available for Sale (AFS); and (c) Held for Trading (HFT).

4. The interest on the securities is paid by the Government or the authorities issuing securities on specific fixed dates called coupon dates, say after an interval of six months. When a Bank purchases a security on a date which falls between the dates on which the interest is payable on the security, the purchaser Bank, in addition to the price of the security, has to pay an amount equivalent to the interest accrued for the period from the last interest payment till the date of purchase. This interest is termed as the interest for the broken period. When the interest becomes due after the purchase of the security by the Bank, interest for the entire period is paid to the purchaser Bank, including the broken period interest. Therefore, in effect, the purchaser of securities gets interest from a date anterior to the date of acquisition till the date on which interest is first due after the date of purchase.

5. Under the Income Tax Act, 1961 (for short, 'the IT Act'), Section 18, which was repealed by the Finance Act, 1988, dealt with tax leviable on the interest on securities. Section 19 provided for the deduction of (i) expenses in realising the interest and (ii) the interest payable on the money borrowed for investment. Section 20 dealt with the deduction of (i) expenses in realising the interest and (ii) the interest payable on money borrowed for investment in the case of a Banking company. Section 21 provided that the interest payable outside India was not admissible for deduction. Sections 18 to 21 were repealed by the Finance Act, 1988, effective from 1st April 1989. We are dealing with cases involving the period post the deletion of the four Sections.

6. In Civil Appeal Nos. 3291-3294 of 2009, which is the lead case, the appellant-assessee is a Scheduled Bank. The appellant was engaged in the purchase and sale of government securities. The securities were treated as stock-in-trade in the hands of the appellant. The amount received by the appellant on the sale of the securities was considered for computing its business income. The appellant consistently followed the method of setting off and netting the amount of interest paid by it on the purchase of securities (i.e., interest for the broken period) against the interest recovered by it on the sale of securities and offering the net interest income to tax. The result is that if the entire purchase price of the security, including the interest for the broken period is allowed as a deduction, then the entire sale price of the security is taken into consideration for computing the appellant's

income. According to the appellant's case, the assessing officer allowed this settled practice while passing regular assessment orders for the assessment years 1990-1991 to 1992-1993. However, the Commissioner of Income Tax (for short, 'CIT') exercised jurisdiction under Section 263 of the IT Act and interfered with the assessment orders. The CIT held that the appellant was not entitled to the deduction of the interest paid by it for the broken period. The Commissioner relied upon a decision of this Court in the case of *Vijaya Bank Ltd.* v. *Additional Commissioner of Income Tax, Bangalore*[1]. This Court held that under the head "interest on securities", the interest for a broken period was not an allowable deduction. Being aggrieved by the orders of the CIT, the appellant preferred an appeal before the Income Tax Appellate Tribunal (for short, 'Appellate Tribunal'). The Tribunal allowed the appeal by holding that the decision of this Court in the case of *Vijaya Bank Ltd.*[1] was rendered after considering Sections 18 to 21 of the IT Act, which have been repealed. Therefore, the Tribunal held that as the appellant was holding the securities as stock-in-trade, the entire amount paid by the appellant for the purchase of such securities, which included interest for the broken period, was deductible. The respondent Department preferred an appeal before the High Court against the decision of the Appellate Tribunal. By the impugned judgment, the High Court interfered and, relying upon the decision of this Court in the case of *Vijaya Bank Ltd.*[1], allowed the appeal. This order was impugned in Civil Appeal Nos. 3291-3294 of 2009.

7. All other appeals that are the subject matter of this group are preferred by the Revenue. These are the cases where the deduction of interest for the broken period was allowed.

8. The learned counsel appearing for the appellant in Civil Appeal Nos. 3291-3294 of 2009 and learned counsel representing the respondents/Banks in other appeals have made extensive submissions. The submissions made by the learned counsel appearing for the assessees can be summarised as follows:

a. Reliance was placed on a decision of the Bombay High Court in the case of *American Express International Banking Corporation* v. *Commissioner of Income Tax*[2] Learned counsel pointed out that in the said decision, the Bombay High Court distinguished the decision in the case of *Vijaya Bank Ltd.*[1] by holding that in the case of *Vijaya Bank Ltd.*[1], the claim for deduction of interest on broken period was made under Sections 19 and 20 of the IT Act. This was done on the footing that the Department had brought to tax the interest accrued on the securities up to the date of purchase as "interest on securities" under Section 18. It was held

that the decision in the case of *Vijaya Bank Ltd.*[1] will not apply to the cases post-repeal of Sections 18 to 21 of the IT Act. In the said case, the amount of interest was brought into tax under Section 28.

b. The learned counsel appearing for the assessees pointed out that the view taken by the Bombay High Court in the case of *American Express International Banking Corporation*[2] has been approved by the order dated 12th August 2008 of this Court in the case of *Commissioner of Income Tax, Bombay* v. *Citi Bank NA*[3]. The learned counsel pointed out that this Court affirmed the decision of the Bombay High Court in the case of *Citi Bank NA*[3], which in turn relied upon its earlier decision in the case of *American Express International Banking Corporation*[2].

c. Our attention was also invited to a decision by this Court in the case of *Commissioner of Income Tax, Andhra Pradesh, Hyderabad* v. *The Cocanada Radhaswami Bank Ltd., Kakinada*[4]. Inviting our attention to the said decision, it is pointed out that this Court accepted that the securities held by Banking companies are held as stock-in-trade. He pointed out that this Court, in the case of *United Commercial Bank Ltd.; Calcutta* v. *Commissioner of Income Tax, West Bengal*[5], held that government securities are held as stock-in-trade by Banking companies. He submitted that the assessee pays interest for the broken period to which he is not entitled as after the purchase, when the interest becomes due, the assessee gets income for the entire period even covering the interest payable before the date on which the assessee makes the acquisition. It is submitted that there cannot be any dispute that such securities held by Banking companies constitute stock-in-trade. He submitted that in the case of *Commissioner of Income Tax, Jalandhar* v. *Nawanshahar Central Cooperative Bank Ltd.*[6], it was held that investments are a part of the Banking business, particularly when statutorily mandated. It was submitted that Banking companies buy government securities to comply with SLR requirements.

d. It is well-settled that in the Banking business, securities purchased by Banks, per se, constitute stock-in-trade of the Bank as normal and ordinary Banking business is to deal in money credit. The money is parked in readily marketable securities so that it is available to meet the demand of depositors. This argument is supported by a decision of this Court in the case of *Bihar State Cooperative Bank Ltd.* v. *Commissioner of Income*

Tax[7].

e. It was contended that when the interest income of securities is uniformly assessed under the head "profits and gains from business or profession", the decision of this Court in the case of *Citi Bank NA*[3] will squarely apply. It was submitted that in the case of many Banks, for several assessment years, the assessment officer allowed the deduction of interest for the broken period. Reliance was placed on a decision of this Court in the case of *Radhasoami Satsang, Saomi Bagh, Agra* v. *Commissioner of Income Tax*[8].

f. It was submitted that IndusInd Bank Ltd. is following a practice that interest accrued on a security but not due on the date of purchase of security is debited to the profit and loss account as expenditure and is claimed as such in return of income. The balance amount remaining after reducing the broken period interest is capitalised to the balance sheet covering the acquisition cost of such securities. It is submitted that the department has accepted the said methodology for several years. It was submitted that the exercise undertaken by Revenue in disallowing broken period interest on the footing that it is a capital expenditure is revenue neutral. It was pointed out that if the deduction of broken period interest as a capital expense is disallowed, it will have to be added to the acquisition cost of the securities, which will then be deducted from the sale proceeds when such securities are sold in the subsequent years. It was submitted that, consequently, the related interest received would have to be excluded from the income and truncated from the purchase cost, or alternatively, both the broken interest period and interest received thereof will be netted and added/subtracted from the cost of acquisition. Therefore, the exercise done by the Department is academic. It was submitted that the decision of this Court in the case of *Vijaya Bank Ltd.*[1] is per incuriam as it was rendered in ignorance of the decisions of this Court in the case of *Cocanada Radhaswami Bank Ltd.*[4]. Reliance was also placed on the Central Board of Direct Taxes (for short, "the CBDT") Circular No. 665 of 1993.

g. It was also pointed out that though Banks are required to maintain SLR by investing amounts in specified securities, as long as Banks maintain a specified percentage of reserve, they are permitted to buy and sell such securities, irrespective of their categorisation. There is no embargo on the Bank to hold security in SLR up to the maturity date of the security. It was submitted that Banks always treat interest income from all securities as

profit or loss, irrespective of the categorisation of investments. The interest on securities held by Banks is always taxed under the head "income from business or profession". This contention is raised by HDFC Bank. It was submitted that in accordance with the well-settled and accepted method of accounting, the amount of broken period of interest which is debited in the profit and loss account of the Bank is claimed as a deduction while computing the income from business under the head "income from business and profession" as the entire interest income is offered to tax under the said head.

h. Reliance was placed on the RBI Circular dated 1st July 2009, which permits the debit of broken period interest to the profit and loss account. Reliance was also placed on a Circular dated 2nd November 2015 issued by the CBDT. The Circular provides that the investments made by a Banking company are a part of the business of the Bank. Therefore, income from such investments is attributable to the business of Banking falling under the head "profit and gain of business and profession".

i. It was submitted that assuming that as per the mandate of the 1949 Act, the securities are treated as investments in the books of accounts, it cannot be held that even for the purposes of the IT Act, securities would continue to be investments and not stock-in-trade. It was submitted that this Court has repeatedly held that the entries in the books of accounts are not relevant for determining the taxability under the provisions of the IT Act. Reliance is placed on the RBI Circular dated 1st July 2009, which provides that broken period interest is not to be capitalised as part of the cost and is required to be debited to the profit and loss account.

j. It is submitted that as required by the Banking Regulation Act, all three categories of securities are treated in the same manner, and there is no distinction between the securities which are HTM and the other two categories of securities. It was submitted that Banks can always shift the securities falling in the category of HTM to the other two categories.

k. It was further urged on behalf of the assessee that the plea based on distinguishing the nature of the treatment of SLR securities viz -a-viz non-SLR securities has been raised for the first time by the Revenue before this Court.

l. Considering the fact that securities are held as stock-in-trade, interest paid on them constitutes an expense which is liable to be claimed as a deduction.

9. The submission of learned ASG is that the broken period interest

on security held to maturity constitutes an investment and, therefore, should be treated as capital expenditure. It was submitted that since HTM securities are held up to maturity for maintaining the SLR ratio and as the same are treated as investment in the books of accounts of Banks, the same should be treated as investment and not stock-in-trade. Another submission of ASG is that Circular No. 18 of 2015 applies only to non-SLR securities. Another submission of learned ASG is that the decision of *Vijaya Bank Ltd.*[1] would squarely apply as while omitting Sections 18 to 21, corresponding amendments have been made in Sections 28, 56(2)(d) and 57(3) of the IT Act, and the securities are now taxable under the head of "Income from other Sources". Therefore, the principles laid down in the case of *Vijaya Bank Ltd.*[1] will squarely apply. He argued that the increase in capital by the acquisition of securities results in the expansion of the Bank's capital base, which helps in profit making. Therefore, the expenditure in the nature of broken period interest was capital expenditure. Learned ASG, thus, submitted that the assessees in these cases will not be entitled to a deduction of broken period interest.

CONSIDERATION OF LEGAL POSITION

10. We deal with the legal position at the outset. As noted, Sections 18 to 21 were deleted from 1st April 1989. In this group of appeals, we are not concerned with cases before the financial year 1988-1989. Section 14 of the IT Act reads thus:

> "14. Heads of income.— Save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income:—
>
> A.—Salaries.
>
> B. * * * * *
>
> C.—Income from house property.
>
> D.—Profits and gains of business or profession.
>
> E.—Capital gains.
>
> F.—Income from other sources."

Clause B was of "interest on securities". It was deleted with effect from 1st April 1989 along with Sections 18 to 21, which dealt with interest on securities. Head 'D' is of income from "profits and gains of business or profession" covered by Section 28 of the IT Act. Profits and gains from any business or profession that the assessee carried out at any time during the previous year are chargeable to income tax. Under Section 36(1)(iii), the assessee is entitled to a deduction of the amount of interest paid in respect of capital borrowed for the purposes of the business or profession. Section 37 provides that any expenditure which

is not covered by Sections 30 to 36 and not being in the nature of capital expenditure, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed for computing the income chargeable under the head "profits and gains of business or profession". Section 56 of the IT Act provides that income of every kind which is not to be excluded from the total income under the IT Act shall be chargeable to income tax under the head "income from other sources" if it is not chargeable to income tax under any of the five heads provided in Section 14. Therefore, interest on investments may be covered by Section 56. Section 57 provides for the deduction of expenditure not being in the nature of capital expenditure expended wholly and exclusively for the purposes of making or earning such income. In the case of interest on securities, any reasonable sum paid for the purposes of realising interest is also entitled to deduction under Section 57 of the IT Act.

DECISIONS STARTING FROM THE CASE OF VIJAYA BANK LTD.[1]

11. The first decision which needs consideration is in the case of *Vijaya Bank Ltd.*[1]. Regarding the facts of the said case, it must be noted that the income of the Bank was not assessed under Section 28 of the IT Act but under Section 18 under the Head "interest on securities". In the context of the applicability of Section 18 of the IT Act, the Bank claimed that the broken period's interest was deductible under Sections 19 and 20. In light of these facts, this Court held that the outlay on the purchase of income-bearing assets was a capital outlay. Therefore, no part of the capital outlay can be set off as expenditure against income from the asset in question.

12. A Division Bench of the Bombay High Court, in the case of *American Express International Banking Corporation*[2], dealt with the decision in the case of *Vijaya Bank Ltd.*[1]. We are extensively referring to the decision of the Bombay High Court in the case of *American Express International Banking Corporation*[2] for the reason that this Court in *Citi Bank NA*[3] has expressly approved the view of the Bombay High Court in the said decision. We may note that the Bombay High Court dealt with assessment years 1974-1975 to 1977-1978. This was a case where the assessee made adjustments for broken period interest. The assessing officer had disallowed the deduction for the payment made by the assessee for broken period interest. The assessing officer followed the decision in the case of *Vijaya Bank Ltd.*[1]. The Bombay High Court distinguished the decision in the case of *Vijaya Bank Ltd.*[1] and held thus:

> "18. The assessee-Bank, like several other Banks, were consistently following the practice of valuing the

securities/interest held by it at the end of each year and offer for taxation, the appreciation in their value by way of profit/interest earned due to efflux of time. The Bank also claimed deduction for broken period interest payments. However, the department did not accept the assessee's method in the assessment year in question in view of the judgment of the Karnataka High Court in the case of (*Commissioner of Income-tax, Mysore* v. *Vijaya Bank*)[5], reported in 1976 Tax Law Reporter page 524. This judgment has been subsequently upheld by the Supreme Court in 187 I.T.R. page 541. In view of the judgment of the Karnataka High Court, the department took the view that broken period interest payment cannot be allowed as a deduction because it came within the ambit of interest on securities under section 18 of the Income-tax Act. It is the contention of the department that the assessee-Bank received interest on Dated Government Securities from R.B.I. on half-yearly basis. That, the assessee Bank also traded in such securities. That the assessee Bank bought Dated Government Securities during the intervening period between two due dates. That, on purchase of the dated Government Security, the assessee became the holder of the security and accordingly, the assessee received half-yearly interest on the due dates from R.B.I. on purchase. Therefore, according to the department, the income which the assessee-Bank received came under section 18 of the Income-tax Act interest on securities. Under the circumstances, it was not open to the assessee Bank to claim deduction for broken period interest payment made to the selling/transferor Bank. That, it was not open to the assessee to claim deduction as revenue expenditure for broken period interest payment as no such deduction was permissible under sections 19 and 20 of the Income-tax Act. That, it was not a sum expended by the assessee for realizing interest under section 19 and, therefore, the assessee was not entitled to claim deduction for broken period interest payment as a revenue expenditure under section 28 of the Income-tax Act. In this connection, the department followed the judgment of the Karnataka High Court in Vijaya Bank's case. Therefore, the point which we are required to consider in this case is : Whether the judgment of the Karnataka High Court in Vijaya Bank's case was applicable to the facts of the present case.

19. Before going further we may mention at the very outset that the security in this case was of the face value of Rs. 5, lakhs. It was bought for a lesser amount of Rs. 4,92,000.00. The difference was of Rs. 8,000.00. The assessee has revalued the security. The assessee offered the notional profit for taxation, as explained herein above, on

accrual basis in the appropriate assessment year during which the assessee held the security. This difference could have been treated by the department as interest on securities under section 18. However, in the instant case, the department has assessed the said difference under, section 28 under the head “Business” and not under the head “interest on securities”. Having treated the difference under the head “Business”, the A.O. disallowed the broken period interest payment, which gave rise to the dispute. It was open to the department to assess the above difference under the head “interest on securities” under section 18. However, they chose to assess the interest under the head “business” and, while doing so, the department taxed broken period interest received, but disallowed broken period interest payment. It is in this light that one has to read the judgment of the Karnataka High Court and the Supreme Court in Vijaya Bank's case. In that case, the facts were as follows. During the Assessment Year under consideration, Vijaya Bank entered into an agreement with Jayalakshmi Bank Limited, whereby Vijaya Bank took over the liabilities of Jayalakshmi Bank. They also took over assets belonging to Jayalakshmi Bank. These assets consisted of two items viz. Rs. 58,568.00 and Rs. 11,630.00. The said amount of Rs. 58,568.00 represented interest, which accrued on securities taken over by Vijaya Bank from Jayalakshmi Bank and Rs. 11,630.00 was the interest which accrued upto the date of purchase of securities by the assessee-Bank from the open market. These too amounts were brought to tax by the A.O. under section 18 of the Income-tax Act. The assessee Bank claimed that these amounts were deductible under sections 19 and 20. This was on the footing that the department had brought to tax, the aforestated two amounts as interest on securities under section 18. It is in the light of these facts that one has; to read the judgment in Vijaya Bank's case. In the light of the above facts, it was held that outlay on purchase of income bearing asset was in the nature of capital outlay and no part of the capital outlay can be set off as expenditure against income accruing from the asset in question. In our case, the amount which the assessee received has been brought to tax under the head “business” under section 28. The amount is not brought to tax under section 18 of the Income-tax Act. After bringing the amount to tax under the head “business”, the department taxed the broken period interest received on sale, but at the same time, disallowed broken period interest payment at the time of purchase and this led to the dispute. Having assessed the amount received by the assessee under section 28, the only limited dispute was whether the impugned adjustments in the method of accounting adopted

by the assessee Bank should be discarded. Therefore, the judgment in Vijaya Bank's case has no application to the facts of the present case. If the department had brought to tax, the amounts received by the assessee Bank under section 18, then Vijaya Bank's case was applicable. But, in the present case, the department brought to tax such amounts under section 28 right from the inception. Therefore, the Tribunal was right in coming to the conclusion that the judgment in Vijaya Bank's case did not apply to the facts of the present case. However, before us, it was argued on behalf of the revenue that in view of the judgment in Vijaya Bank's case, even if the securities were treated as part of the trading assets, the income therefrom had to be assessed under section 18 of the Act and not under section 28 of the Act as income from securities can only come within section 18 and not under section 28. We do not find any merit in this argument. Firstly, as stated above, Vijaya Bank's case has no application to the facts of this case. Secondly, in the present case, the Tribunal has found that the securities were held as trading assets. Thirdly, it has been held by the Supreme Court in the subsequent decision reported in 57 I.T.R. Page 306, in the case of C.I.T. Andhra Pradesh *v.* Cocanada Radhaswami Bank Limited, that income from securities can also come under section 28 as income from business. This judgment is very important. It analyzes the judgment of the Supreme Court in UCO Bank's case reported in 53 I.T.R. page 250, which has been followed by the Supreme Court in Vijaya Bank's case. It is true that once an income falls under section 18, it cannot come under section 28. However, as laid down by the Supreme Court in Cocanada Radhaswami Bank's case (supra), income from securities treated as trading assets can come under section 28. In the present case, the department has treated income from securities under section 28. Lastly, the facts in the case of UCO Bank reported in 53 I.T.R. page 250, also support our view in the present case. In UCO Bank's case, the assessee Bank claimed a set off under section 24(2) of the Income-tax Act, 1922 (section 71(1) of the present Act) against its income from interest on securities under section 8 of the 1922 Act (similar to section 28 of the present Act). It was held that UCO Bank was not entitled to such a set off as the income from interest on securities came under section 8 of the 1922 Act. Therefore, even in UCO Bank's case, the department had assessed income from interest on securities right from the inception under section 8 of the 1922 Act and, therefore, the set-off was not allowed under, section 24(2) of the Act. Therefore, UCO Bank's case has also no

application to the facts of the present case in which the assessee's income from interest on securities is assessed under section 28 right from inception, in fact, in UCO Bank's case, the matter was remitted back as it was contended on behalf of UCO Bank that the securities in question were a part of trading assets held by the assessee in the course of its business and the income by way of interest on such securities was assessable under section 10 of the Income-tax Act, 1922 (similar to section 28 of the present Act). It is for this reason that in the subsequent judgment of the Supreme Court in the case of Radhaswami Bank Limited (supra), that the Supreme Court has observed, after reading UCO Bank's case, that where securities were part of trading assets, income by way of interest on such securities could come under section 10 of the Income tax Act, 1922.

20. In the light of what we have discussed hereinabove, we find that the assessee's method of accounting does not result in loss of tax/revenue for the department. That, there was no need to interfere with the method of accounting adopted by the assessee-Bank. That, the judgment in the case of Vijaya Bank had no application to the facts of the case. That, having assessed the income under section 28, the department ought to have taxed interest for broken period interest received and the department ought to have allowed deduction for broken period interest paid."

(emphasis added)

13. In the case of *Citi Bank NA*[3], the question before this Court was whether interest paid for the broken period should not be considered part of the purchase price and whether it should be allowed as revenue expenditure in the year of purchase of securities. In this decision, this Court quoted the above paragraphs from the decision of the Bombay High Court in the case of *American Express International Banking Corporation*[2]. This Court expressly approved the conclusions recorded by the Bombay High Court. This Court held thus:

"The facts in the present case are similar to the facts in *American Express* (supra). Agreeing with this view and accepting the distinction pointed out by the Bombay High Court, this Court dismissed the two special leave petitions filed by the revenue, one of which was dismissed by a three Judge Bench.

After going through the facts which are similar to the facts in *American Express* (supra), since the tax effect is neutral, the method of computation adopted by the assessee and accepted by the revenue cannot be interfered with. We agree with the view expressed by the Bombay High Court in *American Express* (supra) that on the

facts of the present case, the judgment in *Vijaya Bank Ltd.* (supra) would have no application."

Thus, this Court approved the view taken by the Bombay High Court that the interest paid for the broken period should not be considered as part of the purchase price, but it should be allowed as revenue expenditure in the year of purchase of securities. This Court has reiterated the view taken by the Bombay High Court in the case of *American Express International Banking Corporation*[2].

WHETHER SECURITIES ARE HELD AS STOCK-IN-TRADE

14. In the case of *Cocanada Radhaswami Bank Ltd.*[4], the Bank had shown interest on securities held by it as a source of income. The Bank claimed loss against other banking activities and set off the interest on securities against the higher amount shown as loss in other banking activities. The department allowed the loss to be set off against the income under the head "business" and disallowed it under the income under the head "interest on securities". The Appellate Tribunal confirmed the view. This Court, in paragraphs nos. 3 to 7, held thus:

"3. Learned counsel for the Revenue argued that the income from business and securities fell under different heads, namely, Section 10 and Section 8 of the Act respectively, that they were mutually exclusive and, therefore, the losses under the head "business" could not be carried forward from the preceding year to the succeeding year and set off under Section 22(4) of the Act against the income from securities held by the assessee.

4. Learned counsel for the assessee, on the other hand, contended that though for the purpose of computation of income, the income from securities and the income from business were calculated separately, in a case where the securities were part of the trading assets of the business, the income therefrom was part of the income of the business and, therefore, the losses incurred under the head "business" could be set off during the succeeding years against the total income of the business i.e. income from the business including the income from the securities.

5. The relevant section of the Act which deals with the matter of set off of losses in computing the aggregate income is Section 24. The relevant part of it, before the Finance Act, 1955, read:

"(1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in Section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year:

* * *

(2) Where any assessee sustains a loss of profits or gains in

> any year, being a previous year not earlier than the previous year for the year ending on the 31st day of March, 1940, in any business, profession or vocation, and the loss cannot be wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no other head of income shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation, for that year; and if it cannot be wholly set off, the amount of loss not so set off shall be carried forward to the following year...."

While sub-section (1) of Section 24 provides for setting off of the loss in a particular year under one of the heads mentioned in Section 6 against the profit under a different head in the same year, sub-section (2) provides for the carrying forward of the loss of one year and setting off of the same against the profit or gains of the assessee from the same business in the subsequent year or years The crucial words, therefore, are "profits and gains of the assessee from the same business" i.e. the business in regard to which he sustained loss in the previous year. The question, therefore, is whether the securities formed part of the trading assets of the business and the income therefrom was income from the business. The answer to this question depends upon the scope of Section 6 of the Act. Section 6 of the Act classified taxable income under the following several heads : (i) salaries; (ii) interest on securities; (iii) income from property; (iv) profits and gains of business, profession or vocation; (v) income from other sources; and (vi) capital gains. The scheme of the Act is that income tax is one tax. Section 6 only classifies the taxable income under different heads for the purpose of computation of the net income of the assessee. Though for the purpose of computation of the income, interest on securities is separately classified, income by way of interest from securities does not cease to be part of the income from business if the securities are part of the trading assets. Whether a particular income is part of the income from a business falls to be decided not on the basis of the provisions of Section 6 but on commercial principles. To put it in other words, did the securities in the present case which yielded the income form part of the trading assets of the assessee? The Tribunal and the High Court found that they were the assessee's trading assets and the income therefrom was, therefore, the income of the business. If it was the income of the business, Section 24(2) of the Act was immediately attracted. If the income from the securities was the income from its

business, the loss could, in terms of that section, be set off against that income.

6. A comparative study of sub-sections (1) and (2) of Section 24 yields the same result. While in sub-section (1) the expression "head" is used, in sub-section (2) the said expression is conspicuously omitted. This designed distinction brings out the intention of the legislature. The Act provides for the setting off of loss against profits in four ways. To illustrate, take the head "profits and gains of business, profession or vocation". An assessee may have two businesses. In ascertaining the income in each of the two businesses, he is entitled to deduct the losses incurred in respect of each of the said businesses. So calculated, if he has loss in one business and profit in the other both falling under the same head, he can set off the loss in one against the profit in the other in arriving at the income under that head. Even so, he may still sustain loss under the same head. He can then set off the loss under the head "business" against profits under another head, say "income from investments", even if investments are not part of the trading assets of the business. Notwithstanding this process he may still incur loss in his business. Section 24(2) says that in that event he can carry forward the loss to the subsequent year or years and set off the said loss against the profit in the business. Be it noted that clause (2) of Section 24, in contradistinction to clause (1) thereof, is concerned only with the business and not with its heads under Section 6 of the Act. Section 24, therefore, is enacted to give further relief to an assessee carrying on a business and incurring loss in the business though the income therefrom falls under different heads under Section 6 of the Act.

7. Some of the decisions cited at the Bar may conveniently be referred to at this stage. The Judicial Committee in *Punjab Cooperative Bank Ltd.* v. *CIT* [(1940) 8 ITR 635, 645] has clearly brought out the business connection between the securities of a Bank and its business, thus:

> "In the ordinary case of a Bank, the business consists in its essence of dealing with money and credit. Numerous depositors place their money with the Bank often receiving a small rate of interest on it. A number of borrowers receive loans of a large part of these deposited funds at somewhat higher rates of interest. But the Banker has always to keep enough cash or easily realisable securities to meet any probable demand by the depositors...."

In the present case the Tribunal held, on the evidence, and that was accepted by the High Court, that the assessee was investing its amounts in easily realisable securities and, therefore, the said securities were part of the trading assets of the assessee's Banking

business. The decision of this Court in United Commercial Bank Ltd. *v.* CIT [1958 SCR 79] does not lay down any different proposition. It held, after an exhaustive review of the authorities, that under the scheme of the Income Tax Act, 1922, the head of income, profits and gains enumerated in the different clauses of Section 6 were mutually exclusive, each specific head covering items of income arising from a particular source. On that reasoning this Court held that even though the securities were part of the trading assets of the company doing business, the income therefrom had to be assessed under Section 8 of the Act. This decision does not say that the income from securities is not income from the business. Nor does the decision of this Court in East India Housing and Land Development Trust Ltd. *v.* CIT [(1961) 42 ITR 49] support the contention of the Revenue. There, a company, which was incorporated with the objects of buying and developing landed properties and promoting and developing markets, purchased 10 bighas of land in the town of Calcutta and set up a market therein. The question was whether the income realised from the tenants of the shops and stalls was liable to be taxed as "business income" under Section 10 of the Income Tax Act or as income from property under Section 9 thereof. This Court held that the said income fell under the specific head mentioned in Section 9 of the Act. This case also does not lay down that the income from the shops is not the income in the business. In *CIT* v. *Express Newspapers Ltd.* [(1964) 53 ITR 250, 260] this Court held that both Section 26(2) and the proviso thereto dealt only with profits and gains of a business, profession, or vocation and they did not provide for the assessment of income under any other head e.g. capital gains. The reason for that conclusion is stated thus:

> "It (the deeming clause in Section 12-B) only introduces a limited fiction, namely, that capital gains accrued will be deemed to be income of the previous year in which the sale was effected. The fiction does not make them the profits or gains of the business. It is well settled that a legal fiction is limited to the purpose for which it is created and should not be extended beyond its legitimate field ... The profits and gains of business and capital gains are two distinct concepts in the Income Tax Act : the former arises from the activity which is called business and the latter accrues because capital assets are disposed of at a value higher than what they cost the assessee. They are placed under different heads; they are derived from different sources; and the income is computed under different methods. The fact that the capital gains are connected with the capital assets of the business

> cannot make them the profit of the business. They are only deemed to be income of the previous year and not the profits or gains arising from the business during that year."

It will be seen that the reason for the conclusion was that capital gains were not income from the business. Though some observations divorced from content may appear to be wide, the said decision was mainly based upon the character of the capital gains and not upon their non-inclusion under the heading "business". The limited scope of the earlier decision was explained by this Court in *CIT* v. *Chugandas & Co.* [(1965) 55 ITR 17, 24]. Therein this Court held that interest from securities formed part of the assessee's business income for the purpose of exemption under Section 25(3). Shah, J., speaking for the Court, observed:

> "The heads described in Section 6 and further elaborated for the purpose of computation of income in Sections 7 to 10 and 12, 12-A, 12-AA and 12-B are intended merely to indicate the classes of income : the heads do not exhaustively delimit sources from which income arises. This is made clear in the judgment of this Court in the United Commercial Bank Ltd. case [1958 SCR 79], that business income is broken up under different heads only for the purposes of computation of the total income : by that break up the income does not cease to be income of the business, the different heads of income being only the classification prescribed by the Indian Income Tax Act for computation of income.""

(emphasis added)

The same principles apply to the cases in hand.

15. In the case of *Bihar State Co-operative Bank Ltd.*[7], in paragraph 2 (SCC report), this Court set out the questions involved which read thus:

> "2. In its return the appellant showed these various sums as "other sources", but nothing turns on the manner in which the appellant chose to show this income in its return. The Income Tax Officer, however, assessed the interest for these three years under Section 12 of the Income Tax Act, as income from "other sources". The appellant took an appeal to the Appellate Assistant Commissioner where it was contended that as the business of the appellant Bank consisted of lending money and the deposits had been made not for the purpose of investment but for that business and thereby fulfilling the purpose for which the cooperative Bank was constituted, these various sums of interest were not subject to income tax because of the notification issued by the Central Government under Section 60 of the Income Tax Act. The relevant portion of that notification, CBR Notification 35 dated 20-10-1934,

and No. 33 dated 18-8-1945, was:

> "The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purpose of the said Act:
>
> * * *
>
> (2) The profits of any cooperative society other than the Sanikatta Salt Owners' Society in the Bombay Presidency for the time being registered under the Cooperative Societies Act, 1912 (Act 2 of 1912), the Bombay Cooperative Societies Act, 1925 (Bombay Act 7 of 1925), or the Madras Cooperative Societies Act, 1932 (Madras Act 6 of 1932), or the dividends or other payments received by the members of any such society out of such profits.
>
> Explanation : For this purpose the profits of a cooperative society shall not be deemed to include any income, profits or gains from:
>
> (1) Investments in (a) securities of the nature referred to in Section 8 of the Indian Income Tax Act; or (b) property of the nature referred to in Section 9 of that Act;
>
> (2) dividends, or
>
> (3) the 'other sources' referred to in Section 12 of the Indian Income Tax Act."

The Appellate Assistant Commissioner, however, repelled the contention of the appellant. He held that the business of the appellant consisted of 'lending money, and selling agricultural and other products to its constituents' which could be planned ahead and required no provision for extraordinary claims He remarked that it appeared from the balance sheets that in the Accounting Year 1945 the Bank invested Rs. 13,50,000 as fixed deposits, which, in the following year was raised to Rs. 15,00,000 and it was only in the Accounting Year 1947 that the fixed deposits, "were realised on maturity with interest". He was also of the opinion that the length of the period during which this money "was kept locked in this way" showed clearly that "not the exigencies of pressing necessities, but the motives of investment of surplus fund had actuated the deposits". He therefore held that the fixed deposits with Imperial Bank were held as an investment quite apart from the business of the appellant and the interest from these deposits was not exempt from income tax. He further held that the exemption as to the profit of a cooperative society extended to its sphere of cooperative activities and therefore interest from investments was no part of the appellant's business profits exempt from taxation. Against this order an appeal was taken to the Income Tax Appellate Tribunal and it was

there contended that the Bank did not make the deposits as investments, but in order that cash might be available to the appellant "continuously" for the carrying on of the purposes of its business, and that the deposits were intimately connected with the business of the appellant and therefore the interest should have been held to be profits arising from the business activities of the Bank, and that the finding that the short-term deposits in Imperial Bank were separate from the appellant's Banking business was erroneous. The Income Tax Appellate Tribunal, by its order dated 11-4-1955, held:

> "(1) That the interest was an income rightly to be included under the head of 'other sources'.
>
> * * *
>
> (2) The profits of a cooperative society indicates the profit derived from the business which can be truly called the business of the cooperative society. Investments by the society either in securities or in shares or in Bank fixed deposits are made out of surplus funds. The interest or dividend derived from such investment cannot be regarded as part of the profits of the business (sic) qua such Bank and therefore, it is not exempt from income tax (vide *Hoshiarpur Central Cooperative Bank* v. *CIT* [24 ITR 346, 3501], 24 ITR 346, 350)."

Against this order a case was stated at the instance of the appellant under Section 66(1) of the Act, and the following two questions of law were referred for the opinion of the High Court:

> (1) Whether, in the facts and circumstances of this case, the receipt of interest on fixed deposits was an income under the head of "other sources" : and
>
> (2) Whether in the facts and circumstances of this case, the receipt of interest from the fixed deposits was an income not exempt from taxation under the CBR Notification No. 35 dated 20-10-1934 and No. 33 dated 18-8-1945."

In paragraphs 9 and 10, this Court proceeded to hold thus:

> "9. In the instant case the cooperative society (the appellant) is a Bank. One of its objects is to carry on the general business of Banking. Like other Banks money is its stock-in-trade or circulating capital and its normal business is to deal in money and credit. It cannot be said that the business of such a Bank consists only in receiving deposits and lending money to its members or such other societies as are mentioned in the objects and that when it lays out its moneys so that they may be readily available to meet the demand of its depositors if and when they arise, it is not a

legitimate mode of carrying on of its Banking business. The Privy Council in Punjab Cooperative Bank Ltd. *v.* CIT Lahore [24 ITR 346, 350] where the profits arose from the sale of government securities pointed out at p. 645 that in the ordinary cases the business of a Bank essentially consists of dealing with money and credit. Depositors put their money in the Bank at a small rate of interest and in order to meet their demands if and when they arise the Bank has always to keep sufficient cash or easily realisable securities. That is a normal step in the carrying on of the Banking business. In other words that is an act done in what is truly the carrying on or carrying out of a business. It may be added that another mode of conducting business of a Bank is to place its funds in deposit with other Banks and that also is to meet demands which may be made on it. It was however argued that in the instant case the moneys had been deposited with Imperial Bank on long term deposits inasmuch as they were deposited for one year and were renewed from time to time also for a year; but as is shown by the accounts these deposits fell due at short intervals and would have been available to the appellant had any need arisen.

10. Stress was laid on the use of the word “surplus” both by the Tribunal as well as by the High Court and it was also contended before us that in the bye-laws under the heading “business of the Bank” it was provided that the Bank could “invest surplus funds when not required for the business of the Bank in one or more ways specified in Section 19 of the Bihar Act (Clause 4 III(i) of the bye-Laws). Whether funds invested as provided in Section 19 of the Bihar Act would be surplus or not does not arise for decision in this case, but it has not been shown that the moneys which were in deposit with other Banks were “surplus” within that bye-law so as to take it out of Banking business. As we have pointed out above, it is a normal mode of carrying on Banking business to invest moneys in a manner that they are readily available and that is just as much a part of the mode of conducting a Bank's business as receiving deposits or lending moneys or discounting hundies or issuing demand drafts. That is how the circulating capital is employed and that is the normal course of business of a Bank. The moneys laid out in the form of deposits as in the instant case would not cease to be a part of the circulating capital of the appellant nor would they cease to form part of its Banking business. The returns flowing from them would form part of its profits from its business. In a commercial sense the directors of the Company owe it to the Bank to make investments which earn them interest instead of

letting moneys lie idle. It cannot be said that the funds of the Bank which were not lent to borrowers but were laid out in the form of deposits in another Bank to add to the profit instead of lying idle necessarily ceased to be a part of the stock-in-trade of the Bank, or that the interest arising therefrom did not form part of its business profits. Under the bye-laws one of the objects of the appellant Bank is to carry on the general business of Banking and therefore subject to the Cooperative Societies Act, it has to carry on its business in the manner that ordinary Banks do. It may be added that the various heads under Section 6 of the Income Tax Act and the provisions of that Act applicable to these various heads are mutually exclusive. Section 12 is a residuary section and does not come into operation until the preceding heads are excluded. *CIT* v. *Basant Rai Takht Singh* [1933 ITR 197, 201]."

(emphasis added)

16. The decision of the Privy Council in the case of *Punjab Co-operative Bank* v. *Commissioner of Income Tax*[9] is also very relevant. It was held thus:

"The principle to be applied in such a case is now well settled. It was admirably stated in a Scottish case, *Californian Copper Syndicate* v. *Harris* [(1904) 6 F. 894 : 5 Tax Cas. 159.] and the statement has been more than once approved both in the House of Lords and in the Judicial Committee : See for example *Commissioner of Taxes* v. *Melbourne Trust Ltd.* [[1914] A.C. 1001 at p. 1010.]. Some dicta which appear to support the view that it is necessary to prove that the taxpayer has carried on a separate or severable business of buying and selling investments with a view to profit in order to establish that profits made on the sale of investments are taxable, for example, the dicta in the case of *Commissioners of Inland Revenue* v. *Scottish Automobile and General Insurance Co.* [(1913-16) 6 Tax Cas. 381, at pp. 388, 389.], cannot now be relied on. It is well established, to cite the exact words used in *Californian Copper Syndicate* v. *Harris* [(1904) 6 F. 894 : 5 Tax Cas. 159.].

"that enhanced values obtained from realization or conversion of securities may be so assessable where what is done is not merely a realization or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business".

In the ordinary case of a Bank, the business consists in its essence of dealing with money and credit. Numerous depositors place their money with the Bank often receiving a small rate of interest on it. A number of borrowers receive loans of a large part of these deposited funds at somewhat

> higher rates of interest. But the Banker has always to keep enough cash or easily realisable securities to meet any probable demand by the depositors. No doubt there will generally be loans to persons of undoubted solvency which can quickly be called in, but it may be very undesirable to use this second line of defence. If as in the present case some of the securities of the Bank are realised in order to meet withdrawals by depositors, it seems to their Lordships to be quite clear that this is a normal step in carrying on the Banking business, or, in other words, that it is an act done in "what is truly the carrying on" of the Banking business. This, it appears to their Lordships, is the more appropriate and satisfactory ground for dealing with the question arising in the present case."
>
> (emphasis added)

17. Therefore, the Privy Council and this Court have consistently held that the securities that Banks acquire as a part of the banking business are held as stock-in-trade and not as an investment.

OUR CONCLUSIONS

18. Initially, CBDT issued Circular No. 599 of 1991 and observed that the securities held by Banks must be recorded as their stock-in-trade. The circular was withdrawn in view of the decision of this Court in the case of *Vijaya Bank Ltd.*[1]. In the year 1998, RBI issued a circular dated 21st April 1998, stating that the Bank should not capitalise broken period interest paid to the seller as a part of cost but treat it as an item of expenditure under the profit and loss account. A similar circular was issued on 21st April 2001, stating that the Bank should not capitalise the broken period interest paid to the seller as a cost but treated it as an item of expenditure under the profit and loss account. In 2007, the CBDT issued Circular No. 4 of 2007, observing that a taxpayer can have two portfolios. The first can be an investment portfolio comprising securities, which are to be treated as capital assets, and the other can be a trading portfolio comprising stock-in-trade, which are to be treated as trading assets.

19. As stated earlier, Banks are required to purchase Government securities to maintain the SLR. As per RBI's guideline dated 16th October 2000, there are three categories of securities : HTM, AFS and HFT. As far as AFS and HFT are concerned, there is no difficulty. When these two categories of securities are purchased, obviously, the same are not investments but are always held by Banks as stock-in-trade. Therefore, the interest accrued on the said two categories of securities will have to be treated as income from the business of the Bank. Thus, after the deduction of broken period interest is allowed, the entire

interest earned or accrued during the particular year is put to tax. Thus, what is taxed is the real income earned on the securities. By selling the securities, Banks will earn profits. Even that will be the income considered under Section 28 after deducting the purchase price. Therefore, in these two categories of securities, the benefit of deduction of interest for the broken period will be available to Banks.

20. If deduction on account of broken period interest is not allowed, the broken period interest as capital expense will have to be added to the acquisition cost of the securities, which will then be deducted from the sale proceeds when such securities are sold in the subsequent years. Therefore, the profit earned from the sale would be reduced by the amount of broken period interest. Therefore, the exercise sought to be done by the Department is academic.

21. The securities of the HTM category are usually held for a long term till their maturity. Therefore, such securities usually are valued at cost price or face value. In many cases, Banks hold the same as investments. Whether the Bank has held HMT security as investment or stock-in-trade will depend on the facts of each case. HTM Securities can be said to be held as an investment (i) if the securities are actually held till maturity and are not transferred before and (ii) if they are purchased at their cost price or face value.

22. At this stage, we may refer to a decision of this Court in the case of *Commissioner of Income Tax (Central), Calcutta* v. *Associated Industrial Development Company (P) Ltd., Calcutta*[10]. In the said decision, this Court held that whether a particular holding of shares is by way of investments or forms part of the stock-in-trade is a matter which is within the knowledge of the assessee. Therefore, on facts, if it is found that HMT Security is held as an investment, the benefit of broken period interest will not be available. The position will be otherwise if it is held as a trading asset.

23. Now, we turn to the factual aspects. As far as Civil Appeal No. 3291-94 of 2009 is concerned, the Tribunal, in a detailed judgment, recorded the following conclusions:

a. Interest income on securities right from assessment year 1989-1990 is being treated as interest on securities and is taxed under Section 28 of the IT Act;

b. Since the beginning, securities are treated as stock-in-trade which has been upheld by the Department right from the assessment year 1982-1983 onwards;

c. Securities were held by the respondent Bank as stock-in-trade.

The findings of the Tribunal have been upset by the High Court. The impugned judgment proceeds on the footing that the decision in the case of *Vijaya Bank Ltd.*[1] case would still apply. Thus, as far as Civil

Appeal Nos. 3291-3294 of 2009 are concerned, as a finding of fact, it was found that the appellant Bank was treating the securities as stock-in-trade. The said view was upset by the High Court only on the ground of the decision of this Court in the case of *Vijaya Bank Ltd.*[1]. As the securities were held as stock-in-trade, the income thereof was chargeable under Section 28 of the IT Act. Even the assessing officer observed that considering the repeal of Sections 18 to 21, the interest on securities would be charged as per Section 28 as the securities were held in the normal course of his business. The assessing officer observed that the appellant-Bank, in its books of accounts and annual report, offered taxation on the basis of actual interest received and not on a due basis.

24. Therefore, in the facts of the case, as the securities were treated as stock-in-trade, the interest on the broken period cannot be considered as capital expenditure and will have to be treated as revenue expenditure, which can be allowed as a deduction. The impugned judgment is based on the decision in the case of *Vijaya Bank Ltd.*[1] It also refers to the decision of the Bombay High Court in the case of *American Express International Banking Corporation*[2] and holds that the same was not correct. As noted earlier, the view taken in the *American Express International Banking Corporation*[2] case has been expressly upheld by this Court in the case of *Citi Bank NA*[3]. Therefore, the impugned judgment cannot be sustained, and the view taken by the Tribunal will have to be restored.

25. Now, we come to other appeals which are part of this group. In Civil Appeal @Special Leave Petition (C) Nos. 1445-1446 of 2021, the assessing officer held that the respondent Bank was liable to pay the broken period of interest as part of the price paid for the securities. Hence, a deduction on the said amount was disallowed. The assessee could not succeed before the CIT (Appeals). Before the Appellate Tribunal, reliance was placed on the decision of this Court in the case of *Vijaya Bank Ltd.*[1]. The Tribunal observed that the assessing officer had treated the interest income earned by the respondent Bank on securities as income from other sources. The Tribunal observed that the investments in securities are in stock-in-trade, and this fact has been accepted in the past by the Income Tax department. It was held that the securities in the category of HTM were also held as stock-in-trade, and income/loss arising out of such securities, including HTM securities, has been treated as business income/loss. The Appellate Tribunal held that the interest for the broken period would be admissible as a deduction, and the High Court confirmed the same. We may note here that the Tribunal followed the decision of the Bombay High Court in the

case of *HDFC Bank Ltd.* v. *CIT*[11]. We find no error in the view taken in this case.

26. In Civil Appeal @ Special Leave Petition (C) No. 4843 of 2020, the High Court held in favour of the respondent-Bank by allowing a deduction for broken period interest relying upon the decision in the case of *HDFC Bank Ltd.*[11]. In this case, the assessing officer did not accept the claim of the Bank that the securities held were in the nature of stock-in-trade. However, the CIT (Appeals) and the Appellate Tribunal accepted the respondent Bank's case. In this case, before the Appellate Tribunal, the department conceded in favour of the assessee.

27. In Civil Appeal @ Special Leave Petition (C) No. 7055 of 2021, neither the assessment officer nor the CIT allowed a deduction on account of the broken period interest. However, the Tribunal allowed the same. Before the High Court, Revenue argued that the increase in capital results in the expansion of the Bank's capital base, which helps in profit making. Therefore, the expenditure in the nature of broken period interest was capital expenditure. However, The High Court rightly rejected the contention of the department that the outlay on the purchase of securities was capital outlay.

28. In Civil Appeal @ Special Leave Petition (C) No. 7404 of 2021, the CIT, the High Court took a similar view. The same is the case with Civil Appeals @ Special Leave Petition (C) Nos. 15281 and 1686 of 2021.

29. In Civil Appeal @ Special Leave Petition (C) No. 1687 of 2021 and Civil Appeal @ Special Leave Petition (C) No. 8968 of 2018, the High Court allowed interest deduction on broken period. In Civil Appeal @ Special Leave Petition (C) No. 24841 of 2019, though the assessment officer held that the broken period interest has to be capitalised, the Appellate Tribunal upset the said view. In Civil Appeal No. 4755 of 2023, deduction for broken period interest has been allowed.

30. Hence, in Civil Appeal No. 3291-3294 of 2009, the judgment of the High Court cannot be sustained, and the decisions of the Tribunal dated 29th May 2003 and 15th July 2004 will have to be restored. All other appeals preferred by the Revenue will have to be dismissed subject to clarification regarding securities of the HTM category.

31. Accordingly, we pass the following order:

a. Civil Appeal Nos. 3291 to 3294 of 2009 are hereby allowed by setting aside the impugned judgment and the judgments dated 29th May 2003 and 15th July 2004 of the Appellate Tribunal are restored.

b. All other Civil Appeals are dismissed.

c. There will be no order as to costs.

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[1] 1991 Supp (2) SCC 147

[2] 2002 SCC OnLine Bom 944 : (2002) 258 ITR 601 (Bombay)

[3] Civil Appeal No. 1549 of 2006

[4] 1965 SCC OnLine SC 186 : (1965) 57 ITR 306

[5] 1957 SCC OnLine SC 74 : (1957) 32 ITR 688

[6] (2007) 15 SCC 611 : (2007) 289 ITR 6

[7] 1960 SCC OnLine SC 193 : (1960) 39 ITR 114

[8] (1992) 1 SCC 659 : (1992) 193 ITR 321

[9] 1940 SCC OnLine PC 46

[10] (1972) 4 SCC 447

[11] (2014) 366 ITR 505