

## Office land sold by bank would be taxable as capital gains and not as business income

**Summary – The High Court of Bombay in a recent case of Nashik Road Deolali Vyapari Sahakari Bank Ltd., (the Assessee) held that Amounts received by assessee-bank on sale of land shown as fixed asset would not be taxed as a business income as it was not trading in plots of land; it would be capital gains**

### Facts

- The assessee-bank purchased a plot of land with a view to construct its administrative building. Later on, it was decided not to construct said building and therefore, sold the plot. The assessee, in its return, claimed that the sale of plot of land was a sale of capital asset and subject to long-term capital gain. However, it had credited the consideration received on sale of plot to the profit and loss account. But, it omitted to reduce the said amount while arriving at its taxable income under the head of business income.
- The Assessing Officer held that the profit/gain on the sale of plot of land would be assessed as a business income and not under the head capital gain.
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On further appeal, the Tribunal allowed the appeal of the assessee and accepted claim of the amount being capital gains.
- On appeal to the High Court:

### Held

- The business of the respondent-assessee was not of trading in plots of land and, therefore, the amounts received on sale of plot of land which was originally purchased for construction of administrative building could never be taxed as a business income. The impugned order of the Tribunal is unexceptionable in its reasoning. In any case, this Court in *CIT v. Pruthvi Brokers & Shareholders* [2012] 349 ITR 336/208 Taxman 498/23 taxmann.com 23 (Bom.), on consideration of the Apex Court's decisions in *Goetze (India) Ltd. (supra)* and *National Thermal Power Co. Ltd. v. CIT* [1998] 229 ITR 383 (SC), held that the assessee is entitled to raise additional grounds before the Appellate Authority which may not have been raised before the Assessing Officer. Thus, the grievance of the revenue is unsustainable.