



**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI AMARJIT SINGH, JM**  
**ITA No.1120/Mum/2015**  
**(Assessment Year :2005-06)**

DCIT – 1(1)(1) 579, Aayakar Bhavan M.K.Road, Mumbai – 400 020	Vs.	ANZ Capital Pvt. Ltd., Energy Building Unit No.A, 6 <sup>th</sup> Floor Appasaheb Marathe Marg Prabhadevi, Mumbai – 400 025
<b>PAN/GIR No.</b>		<b>AADCA2376D</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Shri V. Vidyadhar
Assessee by	Ms. Arati Vissanji
<b>Date of Hearing</b>	<b>28/02/2018</b>
<b>Date of Pronouncement</b>	<b>19/03/2018</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by Revenue against the order of CIT(A)-5, Mumbai dated 14/11/2014 for A.Y.2005-06 in the matter of imposition of penalty u/s.271(1)(c) of the IT Act amounting to Rs.13,33,997/-.

2. Rival contentions have been heard and record perused.
3. Facts in brief are that the assessee filed its return of income on 31.10.2005 declaring loss of Rs.3,69,62,440/-. Assessment was made first u/s 143(3) vide order dated 30/11/2007, whereby the total loss was assessed at Rs.3,29,58,697/- after making disallowance of various expenses e.g. contribution to superannuation fund, entertainment

expenditure, contribution to provident fund, lease rent for cars, etc. Subsequently, re-assessment proceedings u/s.147 of the Act, were initiated and consequently assessment order was made vide order u/s 143(3) r.w.s.147 whereby total loss was assessed at Rs.2,70,37,141/-. One of the additions was disallowance of Rs.37,36,687/- being reimbursement of employee related expenses recovered by the assessee from Standard Chartered Bank and penalty was levied u/s 271(1)(c) for furnishing inaccurate particulars of income.

4. By the impugned order, CIT(A) deleted the penalty after observing as under:-

*“The issue is considered. It is noted that the assessee made payment of employee's related expenditure of transferred, business in the transition period, as per the agreement but that expenditure was not debited in the P & L account. This is so inferred because, while making such payments, the relevant expenses were debited to its bank account and then upon claim of reimbursement, the entries were passed by debiting Standard Chartered bank and crediting the account of that expense. That way the expense got squered-up whereas the balance in the ledger account of 'Standard Chartered bank' got reflected in the balance sheet as recoverable under the head 'loans and advances'. In that situation, the reimbursable amount from the Standard Chartered bank cannot be taken as its income. Had it been a case where those expenses were debited in its P & L account, then of course the assessee ought to have included the claim of reimbursement too as its income (by crediting the P&L account). It appears that the assessee's representatives could not explain the facts properly during assessment proceeding and committed a mistake saying that the amount was offered to tax in the following year in A.Y.2006-07, when reimbursement was made. After having considered the facts of the case, I am of the view that the levy of penalty was not warranted. Accordingly, I am cancelling the entire penalty of Rs.11,33,997/-.”*

5. Revenue is in further appeal before us against the above order of CIT(A).

6. We have considered rival contentions and carefully gone through the orders of the authorities below and found from record that the assessee group had sold part of its business to Standard Chartered Bank w.e.f. 01.01.2005; and as per the terms of the agreement, employee related expenses during the transitional period were to be reimbursed by Standard Chartered Bank. During the assessment proceedings, the AO noted that the amount which the assessee claimed as reimbursable from Standard Chartered Bank was not offered to tax. When questioned by the AO, the assessee stated that the amount was received by it next year i.e. in the previous year relevant to AY 2006-07 and was accordingly offered to tax in AY 2006-07. The AO, however, noted from the assessment record for AY 2006-07 that no such offer was indeed made in that year. Accordingly, keeping in view the mercantile system of accounting, the AO added that amount in the year under consideration [AY 2003-06] and levied penalty u/s.271(1)(c).

7. From the record we found that assessee had not debited any expenses related to the part of business transferred to Standard Chartered bank in its P & L account. A clear finding to this effect has been recorded by CIT(A) in his order. The CIT(A) also recorded a finding to the effect that while making such payment, the relevant expenses were debited to its bank account and then upon claim of reimbursement, the entries were passed by debiting Standard Chartered Bank and crediting account of that expenses. These expenditure were got squared up where as the balance in the ledger account of Standard Chartered Bank got

reflected in the balance sheet as recoverable under the head 'loans and advances. In view of these factual position, the CIT(A) observed that reimbursable amount from Standard Chartered Bank cannot be taken as its income, since the expenditure was not claimed in the P & L account as expenses, therefore, there was no reason to account for such reimbursement as its income. Accordingly, there was no case of any concealment of income. The findings recorded by CIT(A) are as per material on record, therefore, penalty so imposed by AO is not warranted.

10. In view of the above, we do not find any infirmity in the order of CIT(A) for deleting the penalty so imposed u/s.271(1)(c) of the IT Act.

**11. In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on this 19/03/2018

**Sd/-**  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 19/03/2018

Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai