

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI RAJENDRA, HON'BLE ACCOUNTANT MEMBER AND
SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

ITA NO.1285/MUM/2016 (A.Y: 2007-08)

The Municipal Co-op Bank Ltd,
Municipal Bank Bhavan, 245,
P.D. Mello Road, Fort,
Mumbai – 400 001

v. DCIT 1(3),
Aayakar Bhavan, M.K. Road,
Mumbai-400 020

PAN NO: AAAAT 3942 P

(Appellant)

(Respondent)

Assessee by : Shri C.A. Yuvak Mangaonkar
Department by : Shri Sumam Kumar

Date of Hearing : 14.06.2018
Date of Pronouncement : 22.06.2018

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 3, Mumbai dated 21.12.2015 in sustaining the penalty levied u/s. 271(1)(c) of the Act.

2. At the outset Learned Counsel for the assessee submitted that penalty was levied on the disallowances/additions made in the Assessment Order as under: -

(1) Disallowance of expenditure incurred on repairs and maintenance i.e. capitalization of expenditure on repairs and renovation.

(2) Disallowance of expenses claimed on account of unrecoverable advances paid for development of banking software.

(3) Addition on account of unclaimed credit balances.

3. Learned Counsel for the assessee submitted that in so far as item Nos (1) & (2) are concerned the Tribunal deleted the disallowances/additions and item No. (3) i.e. addition on account of unclaimed balances this issue was set aside to the Assessing Officer. Copy of the order of the Tribunal in quantum proceedings in ITA.No. 4297/Mum/2013 dated 25.04.2017 is placed on record. Ld. DR accepted the position.

4. On a perusal of the order of the Tribunal, we notice that the disallowance of expenditure incurred on account of repairs and renovation and unrecoverable advances were deleted by the Tribunal and in respect of addition towards unclaimed credit balances the matter was restored to the file of the Assessing Officer for fresh verification and to decide as per law. In the circumstances, since the basis for levy of penalty u/s. 271(1)(c) of the Act no longer remains, the penalty will not survive. Hence we delete

the penalty levied u/s. 271(1)(c) of the Act. Grounds raised by the assessee are allowed.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on the 22nd June, 2018.

Sd/-
(RAJENDRA)
ACCOUNTANT MEMBER

Mumbai / Dated 22/06/2018
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mum