

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

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RAMIT KOCHAR, AM**

आयकरअपीलसं./ I.T.A. No. 5451/Mum/2016,
(निर्धारणवर्ष / Assessment Year: 2010-11)

The Malad Sahakari Bank Ltd. 6 Sujata Niketan Ranisati Marg, Malad (W), Mumbai-400 097	बनाम/ Vs.	DCIT 1(3)(2) Mumbai, Pin-
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAAAT0320R		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. Aarti Sathe, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Sh. B. Satyanarayn Raja, DR

सुनवाईकीतारीख/ Date of Hearing	:	18/06/2019
घोषणाकीतारीख / Date of Pronouncement	:	20.06.2019

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present appeal filed by the assessee is challenging against the order of the Ld. CIT(A)-3, Mumbai dated 24.06.16 for AY 2010-11.

2. The solitary ground raised by the assessee relates to challenging the order of Ld. CIT(A) in sustaining the levy of penalty u/s 271(1)(c) of the I.T. Act.

3. As per the facts of the present case, the additions were made by the AO while passing order u/s 143(3) of the I.T. Act on two counts i.e i) disallowance of deduction being 5% of doubtful debts of Rs. 75,76,011/- and ii) bad debts written off Rs. 2,10,50,041/-. Both these additions were challenged by the assessee before the Ld. CIT(A). However, Ld. CIT(A) had dismissed the appeal of the assessee and consequently, the same was challenged before Hon'ble Tribunal. The Coordinate Bench of ITAT in quantum appeal in ITA No. 2579/Mum/13 and ITA nO. 2469/Mum/14 for AY 2009-10 & 2010-11 had dealt with both the grounds.

4. As far as ground no. 1 of addition, which pertains to disallowance of deduction is concerned, the Tribunal in this respect found that assessee is eligible for deduction u/s 36(1)(viia) to the extent of 7.5% of the business income and as

far as doubtful debts and loss assessee are concerned, it was held that they are non-performing assets for a period of 3 years, which are essentially in the nature of sticky loans and can be considered for allowance u/s 37(1) of the Act. Thus, considering those facts, this issue was restored back to the file of AO for deciding afresh in terms of directions given by the Tribunal.

5. As far as additions on account of bad debts written off, in this respect, full relief was given by the Tribunal by deleting the additions. Thus, we are of the considered view that when additions in respect of bad debts written off has already been deleted, therefore penalty levied by AO and upheld by Ld. CIT(A) is not sustainable in the eyes of law and is thus set aside on this count.

6. However, as far as additions on account of deductions being on doubtful debts are concerned, the same issue has already been restored to the AO for fresh decision. Therefore, in view of the aforesaid order of the Tribunal and also to safeguard the interest of both side, the penalty on this count is set aside to

the file of AO with a direction to examine the imposition of penalty on the basis of outcome of the quantum additions, if any, on the above issue and to decide afresh accordingly.

7. In the net result, the appeal filed by the assessee stands **partly allowed** in terms indicated above with no order as to cost.

Order pronounced in the open court on 20th June, 2019.

Sd/- (Ramit Kochar) लेखासदस्य / Accountant Member मुंबई Mumbai; दिनांक Dated : Sr.PS. Dhananjay	Sd/- (Sandeep Gosain) न्यायिकसदस्य / Judicial Member 20.06.2019
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार
(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai