



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.1693/Mum./2017
(Assessment Year : 2010-11)

Asstt. Commissioner of Income Tax
Circle-3(2)(1), Mumbai

..... Appellant

v/s

Maharashtra Airport Development Co. Ltd.
World Trade Centre, Tower-1
Cuffe Parade, Mumbai 400 005
PAN - AADCM9623M

..... Respondent

C.O. no.235/Mum./2018
(Arising out of ITA no.1693/Mum./2017)
(Assessment Year : 2010-11)

Maharashtra Airport Development Co. Ltd.
World Trade Centre, Tower-1
Cuffe Parade, Mumbai 400 005
PAN - AADCM9623M

..... Appellant
(Original Respondent)

v/s

Asstt. Commissioner of Income Tax
Circle-3(2)(1), Mumbai

..... Respondent
(Original Appellant)

Assessee by : Shri D.G. Pansari
Revenue by : Shri Sanat Kapoor

Date of Hearing - 04.07.2019

Date of Order - 12.07.2019

ORDER**PER SAKTIJIT DEY. J.M.**

Aforesaid appeal by the Revenue and cross objection by the assessee arise out of order dated 23rd November 2016, passed by the learned Commissioner of Income Tax (Appeals)-8, Mumbai, deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") for an amount of ₹ 82,26,553, for the assessment year 2011-12.

ITA no.1693/Mum./2017
Revenue's Appeal

2. The Revenue has filed the present appeal being aggrieved with the decision of the learned Commissioner (Appeals) in deleting the penalty imposed under section 271(1)(c) of the Act.
3. Brief facts are, the assessee company is a wholly owned Government of Maharashtra Undertaking and was created to carry out infrastructure development activities like set-up of Special Economic Zone (SEZ) and development of International Airport at Nagpur. For the assessment year under dispute, the assessee filed its return of income on 30th September 2010, declaring loss of ₹ 8,97,42,143. During the assessment proceedings, the Assessing Officer held that interest income earned by the assessee is required to be assessed

under the head income from other sources, hence, would not be eligible for deduction under section 80IAB of the Act. Accordingly, rejecting assessee's claim of deduction under section 80IAB of the Act in respect of interest income, the Assessing Officer completed the assessment by treating the interest income as income from other sources. On the basis of such addition made in the assessment order proceeding for imposition of penalty under section 271(1)(c) of the Act was initiated alleging furnishing of inaccurate particulars of income and ultimately he proceeded to impose penalty under section 271(1)(c) of the Act for an amount of ₹ 82,26,553. The assessee challenged the aforesaid addition before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of certain judicial precedents cited before him, learned Commissioner (Appeals) deleted the penalty imposed under section 271(1)(c) of the Act.

4. At the outset, learned Counsel appearing for the assessee submitted that while deciding the quantum appeal of the assessee arising out of the assessment order, the Tribunal has accepted assessee's claim that interest income earned from fixed deposit and advances given to the contractor as well as income received from lease rental SEZ is the business income of the assessee and accordingly allowed assessee's claim of deduction under section 80IAB of the Act. Thus, he submitted, since the addition on the basis of which

the Assessing Officer imposed penalty under section 271(1)(c) of the Act has been deleted by the Tribunal, the penalty imposed cannot survive.

5. The learned Departmental Representative fairly submitted that while deciding the quantum appeal of the assessee, the Tribunal has deleted the addition made by the Assessing Officer.

6. We have considered rival submissions and perused the material on record. On a perusal of the order passed by the Tribunal in the quantum appeal filed by the assessee for the impugned assessment year vide ITA no.3072/Mum./ 2014, dated 19th June 2019, it is observed that the Tribunal has reversing the decision of the Assessing Officer and learned Commissioner (Appeals) has treated the interest income earned by the assessee from the fixed deposits and advances given to the contractor as well as lease rental from SEZ as income from business, hence, allowed assessee's claim of deduction under section 80IAB of the Act. Undisputedly, on the basis of the aforesaid additions made by the Assessing Officer, penalty under section 271(1)(c) of the Act was imposed. Therefore, when the additions on the basis of which the penalty under section 271(1)(c) of the Act was imposed have been deleted and assessee's claim of deduction under section 80IAB of the Act in respect of such income has been allowed by the Tribunal, penalty imposed under section 271(1)(c) of the Act

cannot survive. In view of the aforesaid, we do not find any reason to interfere with the decision of learned Commissioner (Appeals) in deleting the penalty imposed. Grounds raised are dismissed.

7. In the result, Revenue's appeal is dismissed.

C.O. no.235/Mum./2018 – By Assessee
Arising out of Revenue's Appeal in
ITA no.1693/Mum./2017

8. In grounds raised in the cross objection, the assessee has challenged the validity of the penalty order on certain legal issues. Since while deciding the Revenue's appeal in the earlier part of the order, we have upheld the decision of the learned Commissioner (Appeals) in deleting the penalty imposed under section 271(1)(c) of the Act, the grounds raised in the cross objection have become infructuous / redundant, hence, do not require adjudication. Accordingly, the grounds raised are dismissed.

9. In the result, cross objection is dismissed.

10. To sum up, Revenue's appeal and assessee's cross objection are dismissed.

Order pronounced in the open Court on 12.07.2019

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 12.07.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai