

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” Bench, Mumbai**

**Before Shri Ravish Sood, Judicial Member  
and Shri N.K. Pradhan, Accountant Member**

**ITA No.1534/Mum/2018  
(Assessment Year: 2002-03)**

Deputy Commissioner of  
Income Tax, CC-7(1),  
R. No. 653, 6<sup>th</sup> Floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai – 400020

Vs.

M/s Saimangal Investrade Ltd.,  
Radha Bhavan, 1<sup>st</sup> Floor, 121,  
Nagindas Master Road,  
Mumbai – 400023

PAN – AABCS4255R

**(Appellant)**

**(Respondent)**

Appellant by: Dr. P. Daniel, Spl. Counsel

Respondent by: Shri Akash Kumar, C.A

Date of Hearing: 07.10.2019

Date of Pronouncement: 11.10.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-49, Mumbai, dated 28.12.2017, which in turn arises from the order passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short ‘Act’), dated 23.12.2008 for A.Y. 2002-03. The revenue has assailed the impugned order on the following grounds of appeal:

“On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting the penalty u/s 271(1)(c) of the Income Tax Act 1961 of Rs.5,80,68,203/-, even though the appeal against the order, deleting quantum addition for A.Y. 2002-03 is pending before Hon’ble Bombay High Court.”

2. Briefly stated, the assessee company which is engaged in the business of trading in shares and securities had filed its return of income for A.Y. 2002–03, declaring a loss of (-) Rs. 15,82,97,470/-. Subsequently, the income of the assessee was assessed by the A.O under

Sec. 143(3), vide his order dated 30.03.2005 at an income of Rs.58,320/- . In the course of the assessment proceedings, it was observed by the A.O that the assessee had shown a business loss of Rs.3,67,28,998/- on share trading. As the assessee failed to substantiate the veracity of its aforesaid claim of loss on the basis of brokers notes/bills and the corresponding entries in the books of account of the opposite parties, therefore, the aforesaid loss of Rs.3,67,28,998/- was disallowed and added back to the income of the assessee. Penalty proceedings under Sec.271(1)(c) of the Act were also initiated by the A.O as regards the aforesaid disallowance of business loss . Also, it was observed by the A.O, that the assessee had advanced an interest free loan of Rs.105,33,15,113/-. On a perusal of the profit and loss account, it was observed by the A.O that the assessee had debited an interest expenditure of Rs.12,12,79,721/- on the interest bearing borrowed funds. As the assessee failed to substantiate that the interest bearing borrowed funds were utilised for its business purposes, therefore, the A.O disallowed the interest expenditure of Rs.12,12,79,721/- and added back the same to the income of the assessee. Penalty proceedings for furnishing of inaccurate particulars of income under Sec. 271(1)(c) were also initiated by the A.O *qua* the aforesaid disallowance of interest expenditure. On the basis of the aforesaid inter alia additions/disallowances, the A.O assessed the total income of the assessee at Rs.58,320/-.

3. Aggrieved, the assessee assailed the assessment in appeal before the CIT(A), who vide his order dated 10.01.2008 upheld the disallowance of the business loss of Rs.3,67,28,998/- and interest expenditure of Rs.12,12,79,721/- that was made by the A.O while framing the assessment. In the meantime, the A.O had vide his order passed under Sec. 271(1)(c), dated 23.12.2008 had imposed a penalty of Rs.5,80,68,203/- on the assessee.

4. Aggrieved, the assessee assailed the penalty imposed by the A.O under Sec. 271(1)(c) before the CIT(A). The CIT(A) vide his order dated 21.05.2009 dismissed the appeal of the assessee and upheld the penalty levied by the A.O. During the appellate proceedings, it was observed by the CIT(A) that the assessee despite having been afforded opportunity to put up an appearance on two occasions, had however failed to do so for reasons best known to him. Also, it was observed by him, that the Tribunal had dismissed the quantum appeal of the assessee on account non-attendance in the course of the quantum appellate proceedings. As

the assessee had resorted to non-compliance at every stage, therefore, the CIT(A) confirmed the penalty levied by the A.O under Sec. 271(1)(c) of the Act.

6. Aggrieved, with the order of the CIT(A), dated 21.05.2009, the assessee carried the matter before the Tribunal. After perusing the facts, the Tribunal vide its order dated 30.07.2010 restored the matter back to the CIT(A), with a direction to decide the same afresh after affording sufficient opportunity of being heard to the assessee. In the meantime, the Tribunal, vide its order dated 25.07.2012 decided the quantum appeal of the assessee. Observing, that the issues involved were squarely covered by the assessee's own cases for A.Y. 2001-02, 2003-04 and 2004-05, the additions made on account of share trading loss and interest disallowance were deleted by the Tribunal. In the backdrop of the aforesaid facts, it was observed by the CIT(A), vide his order dated 28.12.2017, that as the quantum additions which formed the genesis for the initiation and levy of penalty had been vacated by the Tribunal, therefore, the penalty imposed by the A.O u/s 271(1)(c) would no more survive. Accordingly, on the basis of his aforesaid observations, the CIT(A) deleted the penalty of Rs.5,80,68,203/- that was imposed by the A.O under Sec. 271(1)(c) of the Act.

7. The revenue being aggrieved with the vacating of the penalty imposed by the A.O under Sec.271(1)(c) on the part of the CIT(A), has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted, that as the quantum additions forming the very basis for the imposition of penalty under Sec.271(1)(c) had been deleted by the Tribunal, vide its order passed in Saimangal Investrade Ltd. Vs. ACIT, Central Circle-40, Mumbai, (ITA No. 848/Mum/2008, dated 25.07.2012), therefore, the CIT(A) rightly taking cognizance of the said fact had vacated the penalty imposed by the A.O under Sec. 271(1)(c) of the Act. It was thus averred by the Id. A.R that as no infirmity did emerge from the order of the CIT(A), therefore, the appeal filed by the revenue did not merit acceptance and was liable to be dismissed..

8. Per contra, the Id. Departmental Representative (for short 'D.R') submitted, that as the revenue has assailed the order of the Tribunal dated 25.07.2012, which was passed while disposing off the quantum appeal of the assessee, before the Hon'ble High Court, therefore, the matter may be kept in abeyance for the time being.

9. We have given a thoughtful consideration to the issue before us and find that the quantum additions, viz. (i) disallowance of business loss of share trading: Rs.3,67,28,998/- ; and (ii) disallowance of interest expenditure Rs.12,12,29,721/- had been deleted by the Tribunal, vide its order passed in ITA No.848/Mum/2008, dated 25.07.2012, while disposing off the quantum appeal of the assessee. The Tribunal while concluding as hereinabove had observed as under:

“13. After considering the rival submissions and after perusing the co-ordinate bench decision in Chat Computer Pvt. Ltd. v/s DCIT in ITA no.4818/ Mum./2007, order dated 30th December 2010, we find that this issue has been decided in favour of the assessee after observing and holding as follows:—

“6. We have considered the rival contentions and examined the record. As far as borrowals of funds are concerned the borrowals have taken place in earlier years and as per the statements there were no fresh borrowals during the year from the said Madhavpura Mercantile Co-op Bank Ltd (MMCB). The assessee also provided interest only for a part of the year upto 30th September 2001, and as seen from the notes to the accounts Debt Recovery Tribunal has passed certain orders preventing the assessee creating rights of liability. May be keeping in view of the order the assessee has not provided the amount in the books of account but left a note in B-4 of Schedule J in the annual accounts that so much of the amount has not been provided for. Not only that assessee also placed account copy of the MMCB indicating that the amount chargeable for the period on loan obtained was quantified at Rs.9.93 crores. On the facts of the case, even though the same amount is not provided for in the books of account the claim is an allowable deduction in the computation of income as the liability is certain. Quantification of the amount may vary according to the terms of agreement, in case the said bank has taken the matter to the Court as per the orders of the Court but since the amounts are borrowed the liability to pay interest for the whole year has crystallised in view of this the amount debited to assessee's account by the said bank in the bank statement at Rs.9,93,67,932/- is certainly an allowable amount. Assessee relied on many case laws to support that the entries in the books of account are not paramount and the liability is an allowable claim. Since there is no denial of the fact that assessee has borrowed funds and interest for the whole year has to be allowed as deduction, not providing the amount in the P & L Account but quantifying in the notes to the account does not prevent the assessee in claiming the amount as an allowable deduction in its computation of income. The amount is allowable both on facts and on law. Not only that similar claim was also made for AY 2001-02 by the assessee wherein the assessee has provided for an amount of 6.66. crores in the books of account and claimed an interest of 5.02 crores in the computation of income in the same way as was done for this assessment year. The A.O. even in the reassessment under section 143(3) r.w.s 147 for A.Y. 2001-02 dated 15.12.2008, allowed the entire amount of Rs.11.68 crores as a deduction for the purpose of business. Vide para 4&5 of the assessment order, while considering certain amounts for disallowance, considered the entire claim of Rs.11.68 crores (Rs.6.66 crores debited to P & L Account & Rs.5.02 crores claimed in the computation of income) and proportionately disallowed an amount of Rs.5.97 crores under section 36(1)(iii). This order of the A.O. placed on record indicates that the assessee's liability to pay interest was an ascertained liability and is allowable. Keeping in mind the fact that the A.O. in the reassessment proceedings also allowed the amount similarly claimed in the later order for AY 2001-02, we have no hesitation in directing the A.O. to allow the amount as claimed. Accordingly ground No.1 is allowed. A.O. is directed to allow the amount of Rs.9,93,67,932 as claimed.”

14. Thus, following the aforesaid decision of the Tribunal, we set aside the impugned order passed by the learned Commissioner (Appeals) and allow ground no.3, raised by the assessee.”

Accordingly, we are in agreement with the contention advanced by the Id. A.R, that now when the very genesis for the imposition of the penalty had been vacated and is no more in existence as on date, therefore, the penalty under Sec. 271(1)(c) can no more survive on a standalone basis. As regards the contention of the Id. D.R, that as the order of the Tribunal has been

assailed before the Hon'ble High Court, therefore, on the said count, the present appeal may be kept in abeyance, we are afraid does not find favour with us. In our considered view, as the order of the Tribunal has not been stayed by the Hon'ble High Court and thus holds the field, as on date, therefore, there arises no occasion for keeping the present appellate proceedings in abeyance. We thus finding no merit in the appeal of the revenue, we dismiss the same.

10. Resultantly, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 11.10.2019

Sd/-  
(N.K. Pradhan)  
ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक 11.10.2019  
PS. Rohit

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**  
**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**

