

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.4290/MUM/2017 (A.Y: 2011-12)**

Dy. Commissioner of Income-tax Circle – 1(3)(2) Room No. 540, 5 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020	v.	M/s. The Liquidator Memon Co-Op Bank Ltd., (under Liquidation) Patel & Sony Arcade, 234 Bellasis Road Nagpada, Mumbai – 400 008  <b>PAN: AAAAT0066G</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by** : **Shri Vinay U. Devi**  
**Department by** : **Shri R. Manjunatha Swamy**

**Date of Hearing** : **09.12.2019**  
**Date of Pronouncement** : **09.12.2019**

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the revenue against the order of the Learned Commissioner of Income Tax (Appeals) -3, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 31.03.2017 for the Assessment Year 2011-12.

2. Revenue has raised following grounds in its appeal: -

*1. Whether on the facts, and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the penalty u/s 271(1)(c) amounting to Rs.4,39,87,465/-?*

*2. Whether on the facts, and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the penalty based on the*

*observations which are not correct such as (i) that the assessee merged with Bank of Baroda and ceased to exist as a separate party entity even though it had filed returns upto A.Y. 2016-17 (iii) that the loss claimed was voluntarily given up even though no revised return had been filed to withdraw it.*

3. *Whether on the facts, and in the circumstances of the case and in law, the Ld.CIT(A) erred in not appreciating that the loss disallowed amounting to Rs. 14,23,64,257/- represented income in respect of which particulars have been concealed by the assessee by virtue of the deeming provisions of Explanation 1 to section 271(1)(c)."*

3. At the outset, Ld. Counsel for the assessee submitted that on identical circumstances the Tribunal in assessee's own case for the A.Y.2012-13 in ITA.No. 4291/Mum/2017 dated 28.02.2019 deleted the penalty imposed by the Assessing Officer u/s. 271(1)(c) of the Act. Ld.Counsel for the assessee submits that facts being identical to this year, the same may be followed and penalty be deleted.

4. Ld. DR fairly submitted that penalty was deleted by the Tribunal for the A.Y. 2012-13 on identical facts.

5. We have heard the rival submissions and perused the orders of the authorities below. On a perusal of the order of the Tribunal in ITA.No.4291/Mum/2017 dated 28.02.2019, we find that identical issue came up before the Tribunal in assessee's own case for the A.Y. 2012-13 and the Tribunal deleted the penalty observing as under: -

“5. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that during the assessment, the Assessing Officer noted that assessee bank is under liquidation since Financial Year 2010-11 and ceased to function except carrying out liquidation related activities. During the assessment, the Assessing Officer issued show-cause notice as to why the loss of Rs. 1.43 Crore should not be disallowed as assessee bank is in liquidation. The assessee could not furnish any detail pertaining to loss. The Assessing Officer thereby disallowed the loss of Rs. 1.43 Crore.

6. We have noted that the loss was disallowed as requisite details pertaining to loss were not furnished before the Assessing Officer. The penalty was levied by Assessing Officer on such disallowance vide its order dated 30.07.2015. Before the Id. CIT(A), the assessee urged that the operation of assessee bank were taken over by Bank of Baroda as per the direction of Reserve Bank of India. All its employees, branches and record including infrastructure became part of Bank of Baroda, hence, it was not possible to them for furnishing the various details of losses. The loss was disallowed due to non-submission of details. The Id. CIT(A) after considering the contention of assessee concluded that there was justifiable cause for non-submission of the details due to which the loss could not be substantiated being extraordinary nature of case and as there is no entry in existence. The loss claimed by assessee was voluntarily given up and determination of loss and further creating a demand is of no consequence. The Id. CIT(A) also concluded that loss claimed by assessee was voluntarily given up. The Id. CIT(A) also concluded that the Assessing Officer has not identified the type of particulars of income or concealment of income by the assessee merely not filing details called for, which was not in a position to be submit and claiming the loss which they have already given up. The Id. CIT(A) concluded that assessee has not concealed the income for invoking the provision of section 271(1)(c) of the Act. We have given the careful consideration to the finding of Id. CIT(A) and find that there was a sufficient and justifiable reasons that the assessee for not furnishing the requisite details of loss claimed by assessee. Moreover, the assessee has not claimed set off of loss against any future income. Therefore, we concur with the finding of Id. CIT(A).”

6. Facts being identical, respectfully following the said decision of the Tribunal in assessee's own case for the A.Y. 2012-13 we uphold the order of the Ld.CIT(A) in deleting the penalty imposed by the Assessing Officer for the year under appeal i.e., A.Y. 2011-12. We order accordingly.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on the 09<sup>th</sup> December, 2019

Sd/-  
**(MANOJ KUMAR AGGARWAL)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 09/12/2019  
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**