



ITA No.7000/Mum/2007  
M/s. ICICI Bank Ltd.  
[Erstwhile Anagram Finance Ltd.]  
Assessment Year :1997-98

**आयकर अपीलीय अधिकरण “सी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“C” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.7000/Mum/2007  
(निर्धारण वर्ष / Assessment Year: 1997-98)

<b>DCIT–Circle-3(1)</b> Room No.607 Aaykar Bhavan Mumbai- 400 020.	<b>बनाम/</b> <b>Vs.</b>	<b>M/s. ICICI Bank Ltd.</b> [Erstwhile Anagram Finance Ltd.] Laxmi Commercial Centre Behind NABARD Bank, 2 <sup>nd</sup> Floor Bandra-Kurla Complex Bandra (E), Mumbai-400 051.
<b>स्थायी लेखा सं./PAN.: AAACI-1195-H / AAACI-1398-K</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Ms. Aarti Vissanji -Ld.AR
<b>Revenue by</b>	:	Shri Shishir Dhamija-Ld.CIT-DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	16/09/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	16/09/2020

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 1997-98 contest the order of Ld. Commissioner of Income-Tax (Appeals)-XXVII, Mumbai, [in short referred to as ‘CIT(A)’], Appeal



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No. CIT(A)-XXVII/DCIT-3(1)/IT-47/06-07 dated 30/08/2007 on following grounds of appeal: -

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s,271(1)(c) amounting to Rs.8,33,657/- on the disallowance of depreciation on leased assets."
2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s.271(1)(c) amounting to Rs.24,76,532/- on the disallowance of depreciation on sale and leaseback assets."
3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s.271(1)(c) amounting to Rs.6,298/- on the disallowance of deduction u/s.80M."
4. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s.271(1)(c) amounting to Rs.92,66,500/- being premium on redemption of debentures."
5. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s.271(1)(c) amounting to Rs.7,17,937/- being expenditure for increase in share capital."
6. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s,271(1)(c) amounting to Rs.11,39,762/- on the disallowance of expenses made u/s.35D."
7. "The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

As evident, the revenue is aggrieved by deletion of certain penalty u/s 271(1)(c) by learned first appellate authority. The penalty was levied by Ld. Assessing Officer (AO) vide order dated 31/03/2006.

2. The Ld. CIT-DR, Shri Shishir Dhamija, defended the levy of penalty by Ld. AO. However, Ld. Counsel for Assessee (AR), Ms. Aarti Vissanji, at the outset, placed on record a tabulated chart to submit that most of the additions / disallowances, which formed the subject matter of levy of penalty, have either been deleted by the Tribunal or restored back to lower authorities for fresh adjudication and therefore, the penalty would not be even otherwise sustainable in law.



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3. Upon due consideration of material on record, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4. Facts leading to imposition of penalty are that the erstwhile assessee namely M/s Anagram Finance Limited was assessed u/s 143(3) on 29/03/2000 wherein the assessee was saddled with certain disallowances / additions. Consequently, penalty proceedings were initiated u/s 271(1)(c) and certain penalty was levied vide order dated 31/03/2006, *inter-alia*, on account of following disallowances / additions:-

No.	Particulars	Amount of Addition (Rs.)
1.	Claim of Depreciation	19,38,738/-
2.	Sale & Lease back Transaction	57,59,376/-
3.	Deduction u/s 80M	14,646/-
4.	Premium on redemption of debentures	2,15,50,000/-
5.	Expenditure for increase in Authorized Capital	16,69,620/-
6.	Expenses u/s 35D	26,50,610/-

Upon further appeal, Ld. CIT(A) deleted addition against item nos.1 & 2, finding the issue to be debatable one. The penalty against item No.3 has been deleted following the predecessor's order for AY 1994-95. Similarly, penalty against item Nos.4 & 5 has been deleted following the predecessor's order for AY 1993-94. The penalty against item no. 6 has been deleted finding that in the absence of mean rea, no penalty would be leviable. Aggrieved as aforesaid, the revenue is in further appeal before us.

5.1 As rightly pointed out by Ld. AR, we find that issue of disallowance of depreciation on leased asset has already been set aside by the



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coordinate bench to the file of Ld. AO for re-examination vide ITA No. 1475/Mum/2005 order dated 22/10/2019 (para nos. 16 to 20). Further, the penalty on identical issue has been deleted by Tribunal for AY 1995-96, ITA No.5821/Mum/2007 order dated 10/08/2018 (para-4) wherein it was held that since the addition on the basis of which the penalty was levied does not survive, the penalty would not be sustainable. Respectfully following the same, we confirm the deletion of penalty, albeit on a different ground.

5.2 The quantum addition against item no.2 stand deleted by the Tribunal vide ITA No. 1475/Mum/2005 order dated 22/10/2019 (para nos. 21 to 25). Since quantum additions has already been deleted, the penalty against the same would not survive. Hence, the impugned order would not require any interference on our part. This ground stand dismissed.

5.3 Item No.3 is related with penalty on disallowance of deduction u/s 80M. We find that penalty on identical issue has been deleted by the Tribunal in the case of ICICI Limited vide ITA No.1112/Mum/2008, order dated 12/04/2017 (para-6). Respectfully following the same, we confirm the deletion of penalty. This ground stand dismissed.

5.4 We find that the addition against item no.4 (premium on redemption of debentures) has already been set aside and restored back to the file of Ld. AO for re-adjudication vide ITA No. 1475/Mum/2005 order dated 22/10/2019 (para nos. 26 to 29). Since the quantum additions, at the moment, do not survive, the penalty would not be sustainable against the same. This ground stand dismissed.



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5.5 Item No.5 is related with disallowance of expenditure for increase in share capital. We find that penalty on identical issue has been deleted by the Tribunal in assessee's own case for AY 1993-94, ITA No.1417/Mum/2007, order dated 21/01/2009 wherein it was held that the issue was debatable one and the same would not constitute concealment of income or furnishing of inaccurate particulars of income by the assessee. Respectfully following the same, we confirm the stand of Ld. CIT(A) in deleting the penalty on this issue.

5.6 The last item is related with disallowance of claim u/s 35D. We find that the assessee claimed deduction of preliminary expenses u/s 35D which was rejected by Ld.AO in terms of decision of Hon'ble Madras High Court in Agro Cargo Transport Ltd. V/s CIT (236 ITR 1000). We find that this issue was debatable one and the mere rejection of assessee's claim would not necessarily tantamount to concealment of income or furnishing of inaccurate particulars of income as held by Hon'ble Supreme Court in **CIT V/s Reliance Petroproducts Ltd. (322 ITR 158)**. The assessee made a bona-fide claim which was not accepted by the revenue. However, same would not be good ground for levy of penalty unless it was demonstrated that there was any concealment of income / furnishing of inaccurate particulars of income by the assessee. Therefore, we confirm the stand of Ld. CIT(A) in deleting the penalty, on this issue.



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6. Resultantly, the appeal stands dismissed in terms of our above order.

*Order pronounced on 16<sup>th</sup> September, 2020.*

**Sd/-**

**(Mahavir Singh)**

उपाध्यक्ष / **Vice President**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16/09/2020  
Sr.PS, Jaisy Varghese

**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/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.