

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.5755/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2009-10)

The Malad Sahakari Bank Ltd. 6, Sujata, Rani Sati Marg, Malad (E), Mumbai-400097.	बनाम/ Vs.	Deputy Commissioner of Income Tax 1(3) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAT0320R		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Ms. Aarti Sathe	
Revenue by:	Ms. Kavita P. Kaushik (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 21/09/2020
घोषणा की तारीख /Date of Pronouncement: 16/12/2020

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 09.10.2015 passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2009-10 wherein the penalty levied by the AO has been ordered to be confirmed.

2. The assessee has raised the following grounds: -

- “1. On the facts & in the circumstances of the case the Ld. Comm. Of Income tax (Appeals)-3 erred in sustaining the levying of penalty u/s 271(1)(c) of the Income Tax Act 1961 to the extent of Rs.51,07,530/- without understanding the facts & circumstances of the case & the reasons assigned for doing so are wrong &



contrary to the provisions of the Income tax Act & the rules made thereunder.

2. *The appellant craves leave to add, alter, amend and/ or modify all or any of the above ground of appeal on or before the date of hearing."*

3. The brief facts of the case are that the assessee filed its return of income on 26.09.2009 declaring total income to the tune of Rs.54,51,100/- for the A.Y. 2008-09. The order u/s 143(3) of the Act was passed on 31.10.2009 determining total income to the tune of Rs.2,30,25,750/-. The AO has finalized the following additions:-

(1) Disallowance of the deduction u/s 36(1)(viiia) of the I. T. Act
Rs.85,65,450/-

(ii) Disallowance under the head 'Provision and Contingency (investment) Rs.1,09,99,341/-

The AO initiated the penalty proceeding on the basis of concealment of income/furnished inaccurate particulars of income, therefore, invoke the provisions u/s 271(1)(c) of the I. T. Act. Thereafter, the notice was given and after the reply of the assessee, the AO levied the penalty to the tune of Rs.51,07,530/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the penalty, therefore, the assessee has filed the present appeal before us.

4. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. At the very outset, the Ld. Representative of the assessee has argued that the quantum has been set aside by the Hon'ble ITAT by virtue of order dated **21.02.2019 in ITA.**



Nos. 2579/M/2013 & 2469/M/2014 for the A.Ys. 2009-10 & 2010-11, therefore, in the said circumstances, no penalty is leviable in accordance with law. However, on the other hand, the Ld. Representative of the Department has refuted the said contentions. The copy of order dated 21.02.2019 in the assessee's own case bearing **ITA. Nos. 2579/M/2013 & 2469/M/2014 for the A.Ys. 2009-10 & 2010-11** is on the file in which the relevant finding in connection with the issue no. 1 is hereby reproduced as under:-

“6. We have considered rival contentions and carefully gone through the orders of the authorities below and also deliberated on the judicial pronouncements referred by lower authorities in their respective orders ITA Nos.2579/Mum/2013 & 2469/Mum/2014 The Malad Sahakari Bank Ltd., as well as cited by the ld. AR and DR during the course of hearing before us, in the context of factual matrix of the case. From the record we found that during the assessment proceedings, the A.O. noticed that the assessee in the computation of total income has reduced an amount of Rs.85,65,450/- u/s. 36(l)(viiia) being 5% of doubtful and loss on assets i.e. 5% of Rs.17,13,09,000/-. However, the A.O. has allowed Rs. 11,65,236/- which is 7.5% of the business income as per Income Tax Act. Thus, the A.O. has disallowed Rs. 74,00,214/- (85,65,450- 11,65,236). As per the A.O. the relevant section provides for deduction not exceeding 7.5% of the total income [computed before making any deduction under this clause and chapter VIA]. The income computed before making above referred deduction is Rs.1,55,36,475/- and 7½% of the above sum works out to Rs.11,65,236/-.

7. However, as per the ld AR, the above referred section further provides that an assessee at its option is entitled to claim 5% of doubtful assets and loss assets classified in accordance with the guidelines issued by Reserve Bank of India in this behalf. He further invited our attention to the total doubtful and loss assets which are Rs.17,13,09,000/-. As per guidelines issued by Reserve Bank of India and 5% of such amount works out to Rs.85,65,450/-. As per ld AR, the assessee had attached the details as certified by Statutory Auditors in respect of Classification of Assets and Provision made against the Non-Performing Assets as on 31st ITA Nos.2579/Mum/2013 & 2469/Mum/2014 The Malad Sahakari Bank Ltd., March, 2009. Moreover, the proviso to sec. 36[viiia] specifically give option to the assessee to claim deduction @ 5% of its



doubtful and loss assets, worked out in accordance to the guidelines issued by Reserve Bank of India.

8. It was also contention of the ld AR that all the aforesaid doubtful debts + loss assets are non-performing assets for a period of more than 3 years. Thus, the said doubtful + loss assets are more in the nature of sticky loans which can be allowed U/s 37(1) of [I.T. Act](#).

9. We have considered the rival contentions and carefully gone through the orders of the authorities below and found that the assessee is eligible for deduction U/s 36(1)(viiia) of the Act to the extent of 7.5% of the business income which works out to be Rs. 11,65,236/-. From the record we found that the aforesaid doubtful debts and loss assets are non-performing assets for a period more than three years which are essentially in the nature of sticky loans and can be considered for allowance U/s 37(1) of the Act. However, this aspect of the issue has not been considered by the lower authorities, therefore, in the substantial interest of justice, we restore the matter back to the file of the A.O. with a direction to verify the nature of sticky loans and its allowability U/s 37(1) of the Act. Accordingly, balance claim of Rs. 74,00,214/- (85,65,450-11,65,236) is to be decided afresh by the A.O. in terms of direction given hereinabove.

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10. In the result, this ground of appeal is allowed for statistical purposes.”

5. On appraisal of the above mentioned finding, we found that the issue no. 1 is in connection with the disallowance of the deduction u/s 36(1)(viiia) of the I. T. Act is nowhere existence, hence, no penalty is leviable. So far as the other issue is in connection with the Disallowance under the head ‘Provision and Contingency (investment) is concerned, the same has also been restored to the AO meaning thereby the same has also nowhere in existence. The relevant finding has been given in para no. 11 to 15 which is hereby reproduced as under.:-



“14. We further observed that during the FY 2009-10 (AY 2010-11), an amount of Rs.25,39,693/- was debited in the P&L Account under the head "Provisions and Contingencies (Investments)". Details are as under

Particulars	Amortization for FY 2009-10 (AY 2010-11)				
Held to Maturity					
Central Govt. Security	5,33,231.25	5,33,231.25	5,33,231.25	5,33,231.25	,21,32,925
State Govt. Security	95,372.50	95,372.50	95,372.50	95,372.50	3,81,490
Bonds	6,319.50				
Total Amortization	6,34,923.25	6,34,923.25	6,34,923.25	6,34,923.25	6,34,923
Available for sale/Held for Trading					
Central Govt. Security				18,05,625.00	
State Govt. Security				2,72,579.00	
Mutual Funds				0.00	
JIK Industry				90,65,098.70	
Total				111,43,302.70	
IDR Held				114,31,456.72	
Depreciation Required	NIL	NIL	NIL	NIL	NIL
Total Debited in P & L Account					25,39,693

IDR Investment depreciation Reserves as on 01.04.2008 was Rs. 178,81,456.22. Its closing balance as on 31.03.2009 was Rs. 114,31,456.22. NIL depreciation was debited in the P& L Account as the amount of IDR held at the end of every quarter was more than the depreciation required for the quarter. Such computation was done as per the Master Circular of the RBI in this regard.”

15. From the record, it is clear that the assessee-bank has been consistently following the practice as laid down in the Master Circular of the RBI. The Ld. CIT(A) allowed the claim of amortization (on securities ITA Nos.2579/Mum/2013 & 2469/Mum/2014 The Malad Sahakari Bank Ltd., 'Held to Maturity') as computed by the assessee-bank as per the prescription of the RBI. However, he has erroneously not allowed the claim of depreciation (on securities 'Available for Sale')



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which was computed and claimed as per the same Master Circular of the RBI. We accordingly direct the A.O. to allow assessee's claim of depreciation on securities available for sale amounting to Rs. 84,59,648/-."

6. Since both the issues on which the penalty was levied has been set aside by the Hon'ble ITAT in the assessee's own case (supra), therefore, no penalty is liable to be sustainable in the eyes of law. Accordingly, we set aside the finding of the CIT(A) on this issue and delete the penalty.

7. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 16/12/2020

Sd/-

Sd/-

(RAJESH KUMAR)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 16/12/2020

Vijay Pal Singh (Sr. PS)

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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