

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

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

ITA NO. 665/MUM/2014 : (A.Y : 1995-96)

Kotak Mahindra Bank Ltd.,
36-38A, Nariman Bhavan,
227 Nariman Point,
Mumbai 400 021.
PAN : AAACK4409J (Appellant)

Vs. ACIT, Range-3(2),
Mumbai (Respondent)

**Appellant by : Shri Farrokh Irani
Respondent by : Shri Rajesh Kumar Yadav**

**Date of Hearing : 13/02/2017
Date of Pronouncement : 12/04/2017**

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order of the CIT(A)-4, Mumbai dated 19.11.2013, pertaining to the Assessment Year 1995-96, which in turn has arisen from the order passed by the Assessing Officer dated 30.3.2006 under section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, the solitary dispute raised by the assessee is with regard to the action of CIT(A) confirming the levy of penalty of Rs.2,39,028/- u/s 271(1)(c) of the Act.

3. At the time of hearing, the learned representative for the assessee submitted that the CIT(A) has confirmed the penalty of Rs.2,39,028/- u/s 271(1)(c) of the Act on the ground that assessee had furnished inaccurate particulars of income on account of disallowance of depreciation of Rs.5,19,625/- in respect of assets given on lease to M/s. Shri Ranga Alloys Ltd. In this context, the brief facts are that in the assessment finalized u/s 143(3) of the Act dated 31.3.1998, the Assessing Officer, *inter-alia*, disallowed depreciation on assets leased to M/s. Shri Ranga Alloys Ltd. on the ground that the assets were not in existence. It has been contended before us that the aforesaid action of Assessing Officer came up before the Tribunal in ITA No. 5234/Mum/2005 & Ors. and vide order dated 28.11.2016, and the action of Assessing Officer has been set-aside and the matter restored back to the file of the Assessing Officer with directions to examine the issue afresh. At the time of hearing, the learned representative specifically referred to the following discussion in the order of Tribunal dated 28.11.2016 (*supra*) :-

"5. The Ground No.4 urged by the assessee relates to disallowance of depreciation on the assets leased out to M/s Shriranga Alloys on the ground that the assets were not in existence. The Ld A.R submitted that the AO has taken the above said view on the basis of enquiries made from certain persons. Even though the assessee has sought opportunity to cross examine the above said persons, yet the AO has decided this issue against the assessee without providing such an opportunity. The Ld A.R submitted that the disallowance made by the AO without providing opportunity to cross examine the persons would vitiate the assessment order. Accordingly he prayed that the disallowance be deleted. In the alternative, the Ld A.R submitted that

the matter may be restored back to the file of the AO for affording opportunity to the assessee.

5.1 On the contrary, the Ld D.R supported the order of Ld CIT(A) passed on this issue. Having heard rival contentions, we are of the view that this issue needs to be set aside to the file of the AO for deciding the same afresh. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine this issue afresh by allowing opportunity to cross examine the persons on whose statements the AO has placed reliance. We make it clear that the AO should delete the addition, if the opportunity to cross examine could not be provided to the assessee. After providing cross examination, the AO may take appropriate decision in accordance with the law.”

On the basis of the aforesaid, it is sought to be canvassed that the addition on the basis of which the penalty has been levied does not survive and, therefore, the penalty of Rs.2,39,028/- ought to be deleted.

4. The aforesaid factual matrix brought out by the learned representative has not been disputed by the respondent-Revenue.

5. The aforesaid discussion clearly brings out that the impugned penalty is unsustainable because the underlying addition on account of disallowance of depreciation on assets leased to M/s. Shri Ranga Alloys Ltd. has been set-aside by the Tribunal vide order dated 28.11.2016 (supra). As a consequence, the impugned penalty is hereby directed to be deleted.

6. Resultantly, the appeal of assessee is allowed.

Order pronounced in the open court on 12th April, 2017.

Sd/-

(RAVISH SOOD)
JUDICIAL MEMBER

Mumbai, Date : 12th April, 2017

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai