



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"I" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA no.4225/Mum./2008  
(Assessment Year : 2002-03)

Dy. Commissioner of Income Tax  
Circle-3(1), Aayakar Bhawan  
101, M.K. Road, Mumbai 400 020

..... Appellant

v/s

M/s. Budhrani Finance Ltd.  
94, Maker Chambers-VI  
Nariman Point, Mumbai 400 021  
PAN - AAACB2504R

..... Respondent

Revenue by : Shri Saurabh Kumar Rai  
Assessee by : Ms. Vasanti B. Patel

Date of Hearing - 15.09.2016

Date of Order - 30.09.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Instant appeal by the Revenue is directed against the order dated 31<sup>st</sup> March 2008, passed by the learned Commissioner (Appeals)-27, Mumbai, deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2002-03.

2. Brief facts are, the assessee a non banking finance company is engaged in the business of leasing, hire purchase, investment in

stocks and trading in shares. For the assessment year under consideration, the assessee filed its return of income declaring loss of ₹ 14,82,131. During the assessment proceedings, the Assessing Officer treated loss from trading of shares as speculative loss as against business loss claimed by the assessee and added back an amount of ₹ 1,66,19,718. Further, disallowance under section 14A to the extent of ₹ 21,028 was made which was reduced to ₹ 10,000 in appeal. On the basis of aforesaid additions made, the assessee preferred appeal before the learned Commissioner (Appeals) and the learned Commissioner (Appeals) having allowed assessee's claim, the Department came in appeal before the Tribunal. During the pendency of appeal before the Tribunal, the Assessing Officer initiated proceeding for imposition of penalty and vide order dated 21<sup>st</sup> March 2007, imposed penalty of ₹ 59,36,809. Against the order imposing penalty under section 271(1)(c), the assessee preferred appeal before the learned Commissioner (Appeals). The learned Commissioner (Appeals), following his order in assessee's own case for assessment year 2001-02 and 2000-01, deleted the penalty imposed. Being aggrieved, the Department is in appeal.

3. Learned Departmental Representative submitted before us, in the mean time, the Tribunal while deciding the appeal of the Department in ITA no.2617/Mum./2006 dated 23<sup>rd</sup> April 2009, restored both the

additions, on the basis of which penalty was imposed to the file of the Assessing Officer for deciding afresh. He, therefore, submitted, the issue relating to imposition of penalty may be restored back to the file of the Assessing Officer for deciding afresh on the basis of assessment to be made by the Assessing Officer in pursuance to the direction of the Tribunal.

4. Learned Authorised Representative brought to our notice that similar issue relating to claim of loss on share transaction also arose in assessee's case for assessment year 2001-02 and the Tribunal has restored the matter back to the file of the Assessing Officer for fresh adjudication. As far as the issue of imposition of penalty under section 271(1)(c) is concerned, the Tribunal upheld the order of the learned Commissioner (Appeals) in deleting the penalty.

5. We have considered the submissions of the parties and perused the material available on record. Undisputedly, the basis for imposition of penalty is on account of treating the trading loss as speculation loss and disallowance made under section 14A. On a perusal of the order passed by the co-ordinate bench in ITA no.2617/Mum./ 2006 and 5804/Mum./2005 dated 23<sup>rd</sup> April 2009, we have noted that both the issues on the basis of which penalty was imposed have been restored back to the file of the Assessing Officer for fresh adjudication.

Therefore, the very foundation on which the penalty was imposed under section 271(1)(c) no longer exist. We have also noted in assessment year 2001-02, in assessee's own case in ITA no.4211/Mum./2008, upon considering the fact that the issue relating to loss from share transactions whether in the nature of trading or speculation loss has been restored back to the file of the Assessing Officer, the Tribunal upheld the order of the learned Commissioner (Appeals) in deleting the penalty with liberty to the Assessing Officer to initiate penalty proceedings after deciding the issue of claim of loss by the assessee. In consonance with the aforesaid order of the co-ordinate bench, we uphold the order of the learned Commissioner (Appeals) in deleting the penalty imposed under section 271(1)(c). However, it is open to the Assessing Officer to initiate proceedings for imposition of penalty, if warranted, after completing the assessment in pursuance to the direction of the Tribunal.

6. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open Court on 30.09.2016

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

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 30.09.2016**

*M/s. Budhrani Finance Ltd.*

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai