

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.659 OF 2017

Pr.Commissioner of Income-Tax-1 ... Appellant

V/s.

Shamrao Vithal Co-Op bank ... Respondent

Mr.Suresh Kumar for the Appellant.

Mr.Rajeev Wagley i/by M/s DSR Legal for the Respondent.

**CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.
DATE : JUNE 06, 2019.**

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short).

Following question is presented for our consideration:-

"Whether on the facts and circumstances of the case and in law, the ITAT erred in deleting penalty to the extent of Rs.1,41,30,553/- as imposed by the Assessing Officer U/s 271(1) (C) of the Income Tax Act, 1961 on account of incorrect claim of amortization of 1/5th of cost of acquisition of three co-operative banks in excess of consideration (liabilities) over the net assets as a revenue expense U/s 37(1) of the Income-tax Act, 1961 as the conditions specified in Explanation 1 to

Section 271(1)(c) of the Income Tax Act, 1961 are squarely applicable to the facts of the case?

3. Respondent-assessee is a Co-operative Bank. Issue pertains to the assessment year 2007-08 and arise out of penalty proceedings. The assessee had incurred expenditure for acquisition of 3 Co-operative Banks. Claiming directives of RBI contained in its circular, the bank amortized such expenditure over a span of 5 years. The revenue was of the opinion that the expenditure was capital in nature and that the claim of expenditure would be governed by the Income Tax Act, 1961 and not by the directives of RBI. The expenditure was therefore disallowed. The Assessing Officer also instituted penalty proceedings and eventually imposed the penalty. The CIT (Appeals) and the Tribunal deleted the penalty upon which this appeal is filed by the revenue.

4. Having heard learned counsel for the parties and having perused documents on record, we see no error in

the view of the Tribunal. The Tribunal recorded that in relation to the assessee's claim of expenditure two views were possible. Even otherwise the revenue has not made out any case of concealment of income or concealment of particulars of any income. As is well laid down through series of judgments of Supreme Court, merely raising a bonafide claim even if ultimately found to be not sustainable is not a ground for imposition of penalty. In the result, Income Tax Appeal is dismissed.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)

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