IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'I', MUMBAI

BEFORE SHRI R V EASWAR, PRESIDENT AND
SHRI B RAMAKOTAIAH, ACCOUNTANT MEMBER

I T A No: 221/Mum/2010
(Assessment Year: 2006-07)

Investor Services of India Limited, Navi Mumbai… Appellant
(PAN: AABCI4040E)
Vs
Assistant Commissioner of Income Tax 10(3) … Respondent
Mumbai

Appellant by: Mr Anil Chaturvedi
Respondent by: Ms Vandana Sagar

O R D E R

R V EASWAR, PRESIDENT:

This is an appeal by the assessee relating to the assessment year 2006-07. The assessee is a company providing services in the field of merchant banking, share and stock broking, etc. The appeal arises out of the assessment order dated 30.09.2008 passed under section 143(3) of the Income Tax Act, 1961.

2. The only issue in the appeal is whether the departmental authorities were justified in disallowing the expenses of ₹5,65,483/-.

3. The assessee claimed deduction in respect of an amount of ₹5,65,514/- under the head "IDBI not recoverable". The amount consisted of the following: -

Sr. No.	Scheme	Amount (Rs.)
1.	IDBI Flexibonds 21	31
2.	IDBI Flexibonds 96	66,780
3.	IDBI Flexibonds 18	1,665
4.	IDBI Omni Bonds Scheme	4,92,803
5.	SIDBI	4,235
	Total	5,65,514

The Assessing Officer simply observed that the amount represented penalty on account of loss of interest to IDBI in respect of double allotment of bonds to an investor and therefore cannot be allowed as a deduction. On appeal, the CIT(A) held that only the amount of ₹31/- was allowable as deduction and the balance of ₹5,64,483/- represented penalty which cannot be allowed as a deduction. Hence the present appeal.

4. The allowability of the expenses depends upon the nature of the payment – whether it is penalty in which case it is not allowable under section 37(1) or whether it is a payment of some other nature which could be allowed if it is incidental to the carrying on of the assessee's business. The assessee is engaged in the business of providing services in the field of merchant banking and share and stock broking. In the course of its business it has acted as approved Registrar and transfer agent for the securities / bonds issued by IDBI. It is in this background that we have to examine the four items of payment which are disputed before us. So far as the amount of ₹66,780/- is concerned, it appears that IDBI while making the payment of outstanding bills to the assessee, deducted the said amount on account of delayed payments. A copy of the letter of IDBI dated 30.06.2005 is available at page 95 of the paper book. From this it is seen that the assessee raised certain bills for the months of April and May 2005 on IDBI for folio maintenance, redemption processing, out of pocket expenses, mailing expenses, etc. in an amount of ₹1,33,802/-. IDBI paid only ₹67,022/-. The balance of ₹66,780/- was not paid and it was shown in the letter as

"adjustment". In the same letter it was clarified that a sum of ₹62,657/- was adjusted in respect of interest on delayed payment cases, the details of which had been provided to the assessee earlier. The balance of ₹4,123/- represented an amount paid to Shri Sharad Kumar Nahar. The letter shows that IDBI did not pay the amount of ₹66,780/- and from the details given in the letter it seems that the deduction was on account of some delay in respect of the payments. Considering the assessee's business, it appears that such delay is incidental to the same. We therefore consider that the amount of ₹66,780/- is allowable as business expenditure.

5. As regards the amount of ₹1,665/- it appears that one of the customers filed a case against the assessee before the Consumer Court for non receipt of amount due on the Discount Bonds of IDBI. The assessee paid up ₹12,598/- but could recover only ₹10,933/- from IDBI and had to write off the balance of ₹1,665/-. This also appears to us to be an expenditure arising in the course of the assessee's business and hence allowable. As regards the payment of ₹4,235/-, it appears to be of the same nature since this amount also could not be recovered from IDBI / SIDBI. The assessee had to pay the consumer ₹14,235/- as per directions of the Consumer Court and could recover only ₹10,000/- from the investor and could not recover the balance. In our view this amount is also allowable as arising in the course of the assessee's business.

6. We now come to the amount of ₹4,92,803/-. This relates to the IDBI Omni Bonds Scheme. Due to some mistake, the Avadh Gramin Bank was allotted the Bonds twice and interest also was

paid twice. The interest was sought to be recovered from the Avadh Gramin Bank. IDBI claimed to recover ₹83,71,378/- but could ultimately recover only ₹78,78,575/-. The balance of ₹4,92,803/- could not be recovered and the assessee was held liable for the same. In its letter dated 27.01.2006 (page 98 of the paper book) IDBI had informed the assessee that the amount of ₹4,92,803/- was being adjusted against the assessee's bill raised on IDBI for services. However, what has been found objectionable by the income tax authorities is that in the said letter IDBI has characterized the payment as penalty. When we look at the calculations at page 99, which is titled "Calculation for the adjustment of penalty", we find that what IDBI done is to simply deduct the amount of ₹4,92,803/- as an adjustment from the total bill for ₹5,45,046/- raised by the assessee. We are of the view that the IDBI has wrongly characterized the adjustment as a penalty. It is not a statutory body empowered to levy penalties. The mere description of the adjustment of the amount which IDBI could not recover from the Avadh Gramin Bank and which was sought to be adjusted against the assessee's bill, as penalty cannot be decisive of the nature of the payment. In the letter IDBI has remarked that the assessee has also to be made accountable for the mistake in double allotment of the Bonds to Avadh Gramin Bank. The assessee was merely denied the full payment of its bill and the loss incurred by IDBI was sought to be recovered from the assessee. We are satisfied that it has been loosely termed as penalty. It actually represents a loss arising to the assessee in the course of its business and hence allowable.

7. In the result, the entire amount of ₹5,65,483/- is allowed as a deduction. The appeal is allowed with no order as to costs.

Order pronounced in the Open Court on 20th April 2011.

Sd/-	Sd/-
(B Ramakotaiah) Accountant Member	(R V Easwar) President

Mumbai, Dated 20th April 2011
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copy to:

1. Investor Services of India Limited
   IDBI Building, "A" Wing, 2nd Floor
   Rajiv Gandhi Marg, Sector 11
   CBD Belapur, Navi Mumbai 400 614
2. ACIT 10(3), Mumbai 3.CIT-10, Mumbai
4. CIT(A)-22, Mumbai 5.DR "I" Bench

TRUE COPY BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI