आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'सी' मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

सर्वश्री बी.आर.मित्तल, न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य के समक्ष

BEFORE SHRI B.R. MITTAL, JM AND SHRI RAJENDRA, AM

आयकर अपील सं./I.T.A. No.7592/Mum/2010

(**निर्धारण वर्ष /** Assessment Year: 2005-06)

Assistant Director of Income Tax (IT)-1(2), 119, Scindia House, Ballard Pier, Mumbai-400038	**बनाम**/ Vs.	Citicorp Investment Bank (Singapore) Ltd., C/o Citibank NA, 3rd floor, Trent House, G-Block, Plot No.60, Bandra-Kurla Complex, Bandra (E), Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACC5806F		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से / Appellant by :	Shri Mohit Jain
प्रत्यर्थी की ओर से/Respondent by :	Shri Nitesh Joshi

सुनवाई की तारीख / Date of Hearing : 18.07.2013

घोषणा की तारीख /Date of Pronouncement : 18.07.2013

आदेश / O R D E R

PER B.R.MITTAL JM:

The department has filed this appeal for assessment year 2005-06 against the order of ld. CIT(A) dated 31.08.2010 deleting the penalty imposed u/s 271 (1)(c) of the Income Tax Act, 1961.

2. The relevant facts giving rise to this appeal are that the assessee is an Investment Bank and is a tax resident of Singapore , had been registered as Foreign Institutional Investor (FII) with SEBI. The assessee had taken forward contract in foreign exchange to safeguard its interest against the risk of fluctuation in the foreign currency liability used by it for purchase of debentures. On sale of debentures the said foreign cover was pre-terminated which resulted into profit of Rs.2,21,69,806/- which

the assessee claimed as capital gains and also stated that the said gains were arisen on cancellation of forward contract cover on debt instruments which is exempt under Article 13(6) of Indo-Singapore Treaty. AO did not agree with the contentions of the assessee and included the said profit of Rs.2,21,69,806/- under the head "income from other sources" and initiated penalty proceedings u/s 271 (1)(c) of the Act. He accordingly levied penalty of Rs.92,71,410/- which is equivalent to 100 % of the tax sought to evaded on the above amount. Being aggrieved, the assessee filed appeal before the First Appellate Authority.

3. L.d CIT(A) has cancelled the said penalty levied by AO considering that the assessment has been made on the basis of difference of opinion regarding interpretation of law on the question of characterization of gains from cancellation of forward contract for foreign currency as income from other sources instead of treating it as capital gains. Ld. CIT(A) has stated that there is a bonafide belief in respect of both the views and hence levy of penalty is not justified. Hence, department is in appeal before the Tribunal.

4. At the time of hearing, it was pointed out that the Mumbai Bench of the Tribunal in the case of assessee, Citicorp Investment Bank (Singapore) Ltd. V.s Dy.Director of Income Tax (IT) in ITA No.910/Mum/2009 (AY-2005-06) in the quantum appeal filed by assessee by its order dated 8.6.2011 held that gains arisen from early settlement of forward foreign exchange contract has to be taken as capital gain. Ld. AR filed a copy of the said Tribunal order to substantiate his submissions and as such the addition made by AO has been deleted by the Tribunal. L.d DR has not disputed the above facts.

5. There is no dispute that when the very addition for which the penalty has been levied has been deleted in the quantum appeal, there is no reason survival or sustenance of penalty u/s 271 (1)(c) of the Act. In this regard, we are supported by the decision of the Hon'ble Rajasthan High Court in the case of CIT V/s Cosmopolitan Trading Corporation (2005) 274 ITR 640(Raj) and Durga Kamal Rice Mills V/s CIT (2004) 265 ITR 25 (Cal).

6. In view of above, we uphold the order of ld.CIT(A) without going into the other aspects as to whether the claim of the assessee was bonafide or issue was debatable or not because the addition has already been deleted by the Tribunal in the quantum appeal. Ground of appeal taken by the department rejected.

7. In the result, appeal filed by the department is dismissed.

Order pronounced after hearing ld. Representative of the parties in the open court on 18th July, 2013

आदेश की घोषणा खुले न्यायालय में दिनांकः 18th July, 2013 को की गई ।

Sd/-	sd/-
(RAJENDRA)	(B.R. MITTAL)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 18 /07/2013

व.नि.स./ *SRL*, Sr. PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

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,

True copy

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**