

आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI PAWAN SINGH, JM

आयकर अपील सं./I.T.A. No.1231/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2009-10)

Vasai Vikas Sahakari Bank Ltd. Samaj Mandir, Opp. New English High School, Parnaka, Vasai (W)-401 201	बनाम/ Vs.	ACIT, Circle-4, Thane
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAAAV 0519 Q		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Bhupendra Shah
प्रत्यर्थी की ओर से/Respondent by	:	Shri Ram Tiwari
सुनवाई की तारीख / Date of Hearing	:	21.03.2018
घोषणा की तारीख / Date of Pronouncement	:	22.03.2018

आदेश / ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order by the Commissioner of Income Tax (Appeals) dated 01.12.2015 and pertains to the assessment year 2009-10.

2. The grounds of appeal read as under:

1. In the facts and circumstances of the case and in law, the learned A.O. erred in levying penalty of Rs.22,42,719/- in respect of the claim of deduction u/s. 36(1)(viiia).

2. In the facts and circumstances of the case and in law, the learned Id. Commissioner of Income Tax (Appeals) erred in confirming the same by disregarding several judgments and also overlooking the fact that similar penalty was deleted in A.Y. 2010-11.
3. We have heard both the counsel and perused the records. The brief facts leading to the levy of penalty was that the assessee has claimed deduction u/s. 36(1)(viiia) through computation of income, without corresponding debit being made to P & L account. Upon this disallowance, penalty u/s. 271(1)(c) was also levied and confirmed.
4. The Id. Counsel of the assessee submitted that in the identical situation, similar penalty levied in the assessee's own case for assessment year 2010-11, this Tribunal in ITA No. 2869/Mum/2015 vide order dated 22.3.2017 has deleted the penalty by observing as under:
 4. We have heard the rival contention of both the parties. We find that the assessee has merely failed to provide the provision in bad debt and doubtful debt though the provision is made as per RBI guidelines in the earlier was excess. The assessee has directly claimed the deduction in computation of income instead of providing same in the books for debting in the P & L account as per the provisions of the Act. Therefore, the assessee had neither concealed nor filed any inaccurate particulars of income. the assessee has duly disclosed the facts of income in its return of income filed before the department. Therefore, we are of the view that the issue in controversy is covered by the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P.) Ltd. [2010] 322 ITR 158 (SC) Petroproduct (supra) wherein it is held that a mere making claim which is not sustainable in law will not amount to furnishing inaccurate particulars regarding the income of the assessee. such claim made in return cannot amount to inaccurate particular and no penalty u/s. 271(1)(c) can be imposed.

5. Upon carefully considering the facts we find that since in the identical situation the ITAT has confirmed the deletion of the penalty, on same facts penalty cannot be levied. Hence, respectfully following the decision of the co-ordinate bench in the assessee's own case, we set aside the orders of the authorities below and delete the levy of penalty.

6. In the result, this appeal by the assessee stands allowed.

परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

Order pronounced in the open court on 23.03.2018

Sd/-
(Pawan Singh)

न्यायिक सदस्य / Judicial Member

Sd/-
(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 23.03.2018

व.नि.स./Roshani, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai