

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “SMC” BENCH

**(BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
& SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER)**

**ITA. No: 3339/AHD/2016 & C.O. No. 22/AHD/17
(Assessment Year: 2011-12)**

ITO, Ward-1(3)(5), Ahmedabad	V/S	State Bank of India Employees Co.Op. Credit & Supply Society Ltd. SBI Main Branch Bhadra, Ahmedabad
State Bank of India Employees Co.Op. Credit & Supply Society Ltd. SBI Main Branch Bhadra, Ahmedabad	V/S	ITO, Ward-1(3)(5), Ahmedabad
(Appellant)		(Respondent)

PAN: AAAAS7450B

**Appellant by : Smt. Prajna Paramita, Sr. D.R.
Respondent by : Shri S. N. Divatia, A.R.**

(आदेश)/ORDER

Date of hearing : 19 -04-2018

Date of Pronouncement : 23-04-2018

PER N.K. BILLAIYA, ACCOUNTANT MEMBER

1. ITA No. 3339/Ahd/2016 & C.O. No. 22/Ahd/2017 are appeal by the Revenue and cross objection of the Assessee directed against the order of the Ld. CIT(A)-10, Ahmedabad dated 13.09.2016 pertaining to A.Y. 2011-12.
2. The only grievance of the revenue is that the ld. CIT(A) erred in deleting the penalty of Rs. 13,14,324/- levied u/s. 271(1)(c) of the Act.
3. The roots for the levy of penalty lie in the assessment order dated 09.01.2014 r.w.s. 147 of the Act. The assessment was completed after making addition of Rs. 48,92,450/- by disallowing wrong claim of deduction claimed by the assessee society u/s. 80P(2)(a)(i) of the Act. Penal proceedings u/s. 271(1)(c) of the Act were separately initiated.
4. During the course of the penalty proceedings, the assessee was asked to explain why penalty u/s. 271(1)(c) of the Act should not be levied on wrong claim of deduction made by it u/s. 80P(2)(a)(i) of the Act. In its reply, the assessee strongly objected for the levy of penalty. The submissions made by the assessee read as under:-

"2.2 At the outset, we would like to point the brief facts relating to the assessee-society, It is a registered society with Sub-Registrar, Gujarat State Co-Op. Act (for short" GCSA) and it is governed by the bye-laws called "Leaflet-N". It is governed by the Notification, Guidelines, Circulars etc. issued by Sub-Registrar, GCSA from time to time and the books of account, other record are a/so maintained accordingly. It is registered with the objects of accepting deposits from the salaried persons of SBI, Gujarat Region with a view to encouraging thrift and providing credit facility to them. Accordingly, the assessee-society has launched various deposits schemes, such as Term Deposit, Recurring Deposit, Aid to Your Family Scheme, Members Retiring Benefit Fund (MRBF), etc. and at the same time, it is advancing loans to the members such as consumer good loan, car-vehicle loan, food grain loan and general purposes loan, etc. Thus, the entire working of the assessee-society is aimed at achieving the aforesaid objects. It

maintains regular books of account and other record which are subject to audit by Sub-Registrar and Tax Auditor. It is regularly filing its return of income since long.

2.2 During the course of assessment proceedings, the A.O. has disallow the claim of deduction u/s 80P(2)(a)(i) in respect of FD Interest received from SBI mainly on the ground that the FDs were not in nature of loan/credit facilities provided to the members & it would fall under the head "Income from other Sources" rather than "Business Income"

2.3 Being aggrieved, the assesses society have preferred appeal before CIT(A) who has confirmed the addition vide order dt. 04-02-2015. The second appeal has been filled before Tribunal on 07-05-2015 being ITA No. 1205/AHD/2015 which is pending disposal.

2.4 Meanwhile you have proposed to complete penalty proceedings u/s 271(l)(c). We submit that we have neither furnished inaccurate particular of income nor conceal income to the extent of disallowance so made. The details relating to the SBI FDRs & Interest thereon were already on your record & we have not concealed the said particulars. It is a case of difference of opinion as to the allowability of said interest & a matter of interpretation. Recently ITT Ahmedabad batch has deleted identical addition in case of ITO vs. Jafari Momin Vikas Co-Op. Credit Society Ltd. (1491/AHD/2012 dt. 31-10-2012) and similar other decisions have been rendered. Therefore, no penalty is attracted.

2.5 Secondly the claim of deduction so made if genuine & it cannot be said as bogus claimed. Merely because the claimed made by the assessee has been rejected by A.O., no penalty u/s 271(l)(c) is attracted for disallowance of such claim. Refer to Reliance Petro Products Pvt. Ltd. (322 ITR 158)SC.

2.6 Thirdly, it will also be appreciated that the gross interest of Rs. 48,92,453/- has been brought to tax but the net interest by deducting pro-rata expenses should have been taxed, as proposed by A.O, in his original Show Cause Notice. Therefore, the gross interest should be reduced to that extent.

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2.7 It is also further submitted that The CBDT vide Circular No. 18/2015, dated 02/11/2015 has clarified the decision of Board that no appeals will be filled by the department in view of the Supreme Court decision in case of CIT vs. Nawanshahar Central Co-operative Bank Ltd. 160 Taxmann 48 (SC), wherein the Court held that the investment made by banking concern are part of business of banking. Therefore, the income arising from such Investments is attributable to the business of banking falling under the head "Profit and Gains of Business and Profession ". It a/so clarified that though the decision was in the context of co-operative Societies/ Banks claiming deduction u/s. 80P(2)(a)(i) of the Income-tax

Act, the principle is equally applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

The Board has issued above clarification in view of the fact that field officers are taking a view that, "expenses related to Investment in non-SLR securities need to be disallowed u/s. 57(i) of the Act as interest on non-SLR securities is income from other sources".

In view of above, the proposed penalty u/s 271(l)(c) may please be dropped or in the alternative, it may be kept in abeyance till the disposal of appeal by Tribunal."

5. The detailed submissions made by the assessee did not find any favour with the A.O. who completed the penalty proceeded by levying penalty of Rs. 13,14,34/-.
6. Assessee carried the matter before the ld. CIT(A) and pointed out that the Tribunal has deleted the disallowances made by the A.O. and therefore there is no basis for the levy of penalty. The ld. CIT(A) found that the Tribunal has decided the issue in favour of the assessee by following a Division Bench order of the Tribunal in the case of SBI Supervising Official's Co-operative Credit Society Ltd. in ITA Nos. 905 to 908/Ahd/2015. Following the same, the ld. CIT(A) found that since the basis has been removed, no penalty is leviable u/s. 271(1)(c) of the Act.
7. Aggrieved by this, the revenue is before us.
8. The ld. D.R. strongly pointed out that the order of the Tribunal has been reversed by the Hon'ble High Court in 389 ITR 578 and therefore, the levy of penalty is justified. Per contra, the ld. counsel pointed out that the assessee has

preferred cross objection because the First Appellate Authority has not deleted the penalty on merits of the case but has deleted the penalty because the quantum addition has been deleted. It is the say of the ld. counsel that even if the quantum additions have been furnished by the Hon'ble Jurisdictional High Court, the levy of penalty u/s. 271(1)(c) is not justified.

9. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute insofar as the claim of deduction u/s. 80P(2)(a)(i) of the Act is concerned. Initially the Tribunal has deleted the disallowances made by the A.O. and the matter travelled up to the Hon'ble High Court and the Hon'ble High Court has reversed the judgment of the Tribunal and confirmed the disallowances as reported in 389 ITR 578.
10. Be that as it may, the claim of deduction made by the assessee was supported by various judicial decisions which were followed by the Tribunal while deleting the disallowances made by the A.O. Therefore, it can be fairly stated that the claim of deduction was made bona fide backed by various judicial decisions and it cannot be said that the assessee has deliberately made a false claim. No doubt, the Hon'ble Jurisdictional High Court has confirmed the disallowances. But, at the same time, it cannot be said that the assessee has deliberately filed inaccurate particulars of income, nor it can be said that the assessee has concealed particulars of income. The ratio laid down by the Hon'ble Supreme Court in the case of Reliance Petro Products Pvt. Ltd. 322 ITR 158 squarely apply on the facts of the case. Respectfully following the ratio laid down by the Hon'ble Supreme Court, we do not find this to be a fit case for the levy of penalty u/s. 271(1)(c) of the Act. Though, the First Appellate Authority has deleted the penalty for a different reason but considering the

facts of the case in totality, as mentioned elsewhere, the penalty is not leviable u/s. 271(1)(c) of the Act. The appeal by the Revenue is dismissed and the cross objection of the Assessee is allowed.

11. Before closing, the cross objection of the Assessee is barred by limitation by 34 days. We have carefully considered the facts narrated in the affidavit filed for condoning the delay and we are convinced with the fact that the assessee was prevented by reasonable and sufficient cause for not filing in cross objection within time.

Order pronounced in Open Court on	23 - 04- 2018
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Sd/-

(RAJPAL YADAV)
JUDICIAL MEMBER True Copy
Ahmedabad: Dated 23 /04/2018

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad