IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND

SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.213/Nag./2015
(Assessment Year : 2010–11)

Asstt. Commissioner of Income Tax
Akola Circle, Akola ..... Appellant

v/s

The Nandura Urban Co. Operative Bank Ltd.
Main Road, Nandura, Dist. Buldhana ..... Respondent
PAN – AAAT4639O

Assessee by : Dr. Jayant M. Ranade a/w
Shri Vinayak Saoji
Revenue by : Shri U.U. Kasar

Date of Hearing – 25.10.2018	Date of Order – 26.10.2018

O R D E R

PER G. MANJUNATHA, A.M.

This appeal filed by the Revenue is directed against the order dated 31st March 2015, passed by the learned Commissioner (Appeals)–I, Nagpur, for the assessment year 2010–11. The grounds of appeal raised by the Revenue are extracted below:–

"i) On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has erred in deleting the penalty u/s 271(l)(c) of the IT Act of Rs. 39,90,272/-levied by the assessing officer.

(ii) On the facts and in the circumstances of the case, the Ld. CIT(Appeals) has failed to appreciate that the assessee's claim of

deduction was clearly untenable and as such amounted to furnishing of income fit for imposition of penalty u/s 271(1)(c).

(iii) On the facts and in the circumstances of the case the Ld. CIT(Appeals) has erred in holding that the issue of claim of provision of bad and doubtful debts on account of accrued interest on NPA was a debatable issue disregarding the fact that the Hon'ble Supreme Court had extinguished the debate in its decision in the case of Southern Technologies Ltd. 320 ITR 577 which was much before the commencement of relevant assessment year.

(iv) The Ld. CIT(Appeals) has erred in law in holding that the assessing officer has not found any infirmity in the information given in the return of income disregarding the fact that the assessing officer has given a clear finding that the deduction was claimed by the assessee for a mere provision and the amount was not actually written off as a bad debt."

2. Brief facts of the case are that the assessee has filed its return of income for the assessment year 2010–11 on 13th October 2010, declaring loss of ₹ 37,07,600. The assessment was completed under section 143(3) of the Income Tax Act, 1961 (for short *"the Act"*) on 26th March 2013, determining the total income of ₹ 1,09,73,264, by disallowing provisions for bad and doubtful debt of ₹ 1,29,23,500, being interest accrued on NPA. The assessee did not file appeal against the quantum addition made towards provisions for bad and doubtful debts. Thereafter, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income in respect of disallowance of provisions for bad and doubtful debts. Accordingly, he issued a show cause notice and asked the assessee to explain as to why penalty should not be levied for

furnishing inaccurate particulars of income. In response to the notice, the assessee submitted that it has furnished necessary particulars in respect of provisions for bad and doubtful debt in respect of interest accrued on non–performing assets in the financial statement but claimed bad debt as interest accrued on NPA is not received during the year. The assessee further contended that since the assessee has made provisions in respect of accrued interest on NPA, the provisions of section 36(1)(viia) r/w section 36(2) of the Act are not applicable. The Assessing Officer after considering the relevant submissions of the assessee and also by following the decision of the Hon'ble Supreme Court in Dharmendra Textile Processor, [2008] 174 Taxman 571 (SC) held that the assessee has furnished inaccurate particulars of income in respect of provisions for bad debt is highly debatable and two views are possible, therefore, merely for the reason that the claim is not substantiated is not a ground for levy of penalty for furnishing inaccurate particulars of income has no merit as per the provisions of section 36(1)(viia) of the Act, there is no ambiguity in making provisions for bad and doubtful debt. The relevant observations of the Assessing Officer are extracted below:–

> *"5. Assessee's above submissions have been carefully considered. Same is not acceptable. First and foremost on the perusal of the ledger of the bad debt debited by assessee it becomes evident that this deduction of bad and doubtful debts is only a provision and not the actual write off of bad debts. Assessee being a non*

schedule bank provisions sec 36(1) (viia) of income tax Act 1961 are applicable to him, Sec 36(l)(viia) reads as follows:-

"36(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

[(viia) 59[60 in respect of any provision for bad and doubtful debts made by—

(a) a scheduled bank [not being 61] a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank 62[or a cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount 63[not exceeding seven and one-half per cent] of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding 64 [ten] per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner :"

Hence it is quite obvious that as per the provisions of sec 36(1) (viia) provision for bad and doubtful debts are allowed only at the rate of 7.5 % of the total income before before making any deduction under this clause and Chapter VIA whereas assessee has made the provision of entire amount of Rs. 12923500/- without taking into account the provisions of sec 36(l)(viia), hence this deduction is not allowable being merely a provision for bad and doubtful debts and not an actual write off.

Further for the sake of argument even if it is assumed that this amount of Rs. 12923500/- is not merely a provision but actual write off still then for making any deduction for a bad debt provisions of Sec 36(2)(v) will apply since assessee is a bank. As per the provisions of Sec 36(2)(v) which reads as follows:-

> *"36(2) In making any deduction for a bad debt or part thereof the following provisions shall apply— (v) where such debt or part of debt relates to advances made by an assessee to which clause (viia) of sub-section (1) applies, no such deduction shall be allowed unless the assessee has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause. Further sec 36(l)(vii) reads as under:–*
>
> *"36(1)(vii) subject to the provisions of sub-section (2), the amount of 53[any 54bad debt or part thereof54*

which is written off as irrecoverable in the accounts of the assessee for the previous year]:

[Provided that in the case of [an assessee] to which clause (viia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause.]

Thus it is clear that even for the actual write off of bad debts first the reserve for bad and doubtful debts created u/s 36(l)(viia) has to be debited and then only the remaining part of the bad debt can be allowed for write off u/s 37(i)(vii) . The assessee has not done that and directly debited entire provisions for bad and doubtful debts in P&L account which is not allowed."

6. Assessee's contention that "this NPA advance being a non rural Advances and as per our contention the Bad debt provisions having claim limit of 7.5% of Profit or 10% of rural Advances both are not applicable to us and is allowed in full" is incorrect . The sec 36(l)(viia) does not make any distinction between rural and non rural bad and doubtful debts for the purpose of creating the reserve for bad and doubtful debts and hence in the case of banks any bad and doubtful debts be it rural on non rural have to be written off as per the provisions of sec 36(2)(v) and 36(l)(viia). Hence assessee's claim of deduction of Rs.12923500/- on account of provision of bad and doubtful debt is rejected and is added back to the income.

7. Since, the assessee has already made provision for overdue and doubtful debt in the form of bad and doubtful debts (NPA) of Rs 12923500/- during the year, the assessee is entitled to deduction u/s.36(l)(viia) @ 7.5% of the Income Tax Act, 1961 of the gross total income before allowing this deduction. Accordingly, the deduction u/s.36(l)(viia) is allowed to the assessee."

Aggrieved by the penalty order the assessee preferred appeal before the first appellate authority.

3. Before the learned Commissioner (Appeals), the assessee has filed elaborate written submissions which have been reproduced at

Para–4.2 on Page–5 and 6 of the learned Commissioner (Appeals)'s order. The arguments of the assessee before the learned Commissioner (Appeals) are that it has made provisions for bad and doubtful debts on a bonafide belief that the assessee is eligible for claiming provision for accrued interest on non–performing asset. However, the Assessing Officer rejected the acceptances of the assessee and made additions, hence, the same cannot be considered as willful furnishing of inaccurate particulars of income. The learned Commissioner (Appeals), after considering the submissions of the assessee and also relied upon certain judicial precedents including the decision of the Hon'ble Supreme Court in CIT v/s Eli Lily, held that this is not a fit case for levy of penalty, as penalty can be levied only if there no good and sufficient reason as the penalty cannot be levied for each and every additions made in the assessment proceedings. The assessee has made a claim, however, the Assessing Officer did not accept the claim. Mere disallowance of the unsubstantiated claim cannot be considered as furnishing inaccurate particulars of income. Accordingly, he directed the Assessing Officer to delete penalty levied under section 271(1)(c) of the Act. The relevant observations of the learned Commissioner (Appeals) are extracted below:–

> *"5.4 In the contentions raised by the A.R. of the appellant carries substantial force in as much as firstly that, it is a merely a disallowance of claim in the form of expenditure made in the*

return of income; therefore, the relevant information has emanated from the return filed, hence, does not amount to concealment.

Secondly, the ld. A.O. has not found any infirmity in the information given in the return of income filed by the appellant, thus, it being not a case that the statement or information supplied by the appellant was found factually incorrect, therefore, prima–facie, the assessee cannot be considered guilty for having given inaccurate particulars. Thirdly, that there exists diverse views on the allowability or otherwise of the claim of provision for Bad and doubtful debts on account of interest accrued on NPA. Therefore, the issue being highly debatable falls outside the ambit of levy of concealment penalty. Fourthly, that the ld. A.O. has not brought out any evidence on record to demonstrate that the appellant had furnished inaccurate particulars. Fifthly, that merely because the assessee has not challenged the addition made in the further appeal cannot be a ground to infer that the assessee had confessed the concealment, whereas the fact remains that the appellant has, in fact, challenged the additions made by fling a revision petition u/s 264 of the Act, which, though has been rejected by eh appellant has contended that it would challenge the same in appeal.

5.5 The ratio of the judgments in the case of Dharmendra Textile Processors [2008] 174 taxmann 571 (SC) relied upon by the appellant is not applicable to the facts and circumstances of the present case of the appellant, as it being prima–facie not a case of concealment or having furnished any inaccurate particulars of income. On the contrary, the decision of CIT v/s Eli Lily of SC is applicable, in which has has laid down that "However, levy of penalty u/s 271(l)(c) is not mandatory or compensatory or automatic. Penalty can be levied only if there is no good and sufficient reason for the failure to deduct tax at source. On facts, as the issues were controversial and the assessee acted bonafide, penalty could not be imposed."

5.6 On careful examination of the material facts available on record and the ratio laid down in various judicial decisions relied upon by the AR of the appellant as mentioned above, I am of the considered opinion that this is not a fit case for the levy of concealment or having furnished inaccurate particulars of income. Therefore, the penalty levied u/s 271(1) (c) is directed to be deleted."

4. The learned Departmental Representative submitted that the learned Commissioner (Appeals) erred in deleting the penalty levied under section 271(1)(c) of the Act without appreciating the fact that the claim of deduction was clearly untainable and as such it amounted to furnishing of inaccurate particulars of income which is liable for imposition of penalty under section 271(1)(c) of the Act.

5. On the other hand, the learned Authorised Representative for the assessee strongly supported the orders of the learned Commissioner (Appeals).

6. We have heard rival contentions and perused the material available on record. The Assessing Officer levied penalty for furnishing inaccurate particulars of income in respect of disallowance of provisions for bad and doubtful debt in respect of accrued interest on NPA. The issue of taxability of interest accrued on NPA is highly debatable and always two views are possible. When the issue is highly debatable and two views are possible on the interpretation of taxability, the question of invoking provisions of section 271(1)(c) of the Act for furnishing inaccurate particulars of income does not arise. More particularly when the assessee has disclosed necessary facts in his financial statement. In this case, there is no dispute with regard to the fact that disclosure of primary facts in respect of interest accrued

on NPA and claim for provisions of bad debt on such interest in its financial statement. The assessee also explained the reason for claiming provisions for bad debt in respect of interest accrued on NPA. The Assessing Officer neither made out a case of deliberate attempt made to furnish inaccurate particulars of income nor rejected the explanation of the assessee that the issue is highly debatable and there is always two views are possible in view of various decisions of the Courts and Tribunal. Therefore, when primary facts are disclosed in the financial statements regarding the claim, mere disallowance of such claim by not accepting explanation of the assessee does not amount to furnishing of inaccurate particulars of income. This legal position is supported by the decision of the Hon'ble Supreme Court in CIT v/s Reliance Petroproducts Pvt. Ltd. [2010] 322 ITR 158 (SC). It was further supported by the decision of the Hon'ble Madras High Court in CIT v/s Blue Star Ltd., [2013] 357 ITR 669 (Mad.). The learned Commissioner (Appeals) after considering relevant submissions and also by following the decision of the Hon'ble Supreme Court in Reliance Petroproducts Pvt. Ltd. (supra) has rightly deleted the penalty levied by the Assessing Officer. We do not find any error in the findings of the learned Commissioner (Appeals) and, hence, we are inclined to uphold the findings of the learned Commissioner (Appeals) and dismiss the ground raised by the Revenue.

In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 26.10.2018

Sd/-	**Sd/-**
SANDEEP GOSAIN	**G. MANJUNATHA**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

NAGPUR, DATED: 26.10.2018

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The CIT(A);

(4) The CIT, Nagpur City concerned;

(5) The DR, ITAT, Nagpur;

(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

(A.R./Sr. P.S./P.S.)
ITAT, Nagpur