

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
&
SHRI O.P.KANT, ACCOUNTANT MEMBER**

**ITA No.-442/Del/2015
(Assessment Year: 2008-09)**

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| Noida Commercial Co-Operative Bank Ltd. C/o. Sh. Sudesh Garg, Adv. 295, DDA MIG Flats, Prasad Nagar, Phase-I New Delhi PAN : AAABN0147M | vs | JCIT Range Noida, Income Tax Office A-2D, Sector 24, Aayakar Bhawan Noida |
| Assessee by | | Sh. Akhilesh Kumar, Adv. |
| Revenue by | | Sh. Gaurav Sharma, Sr. DR |

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| Date of Hearing | 30.08.2018 |
| Date of Pronouncement | 27.11.2018 |

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been preferred by the assessee against order dated 17.11.2014 passed by the Ld. CIT (Appeals)- Noida for assessment year 2008-09 wherein vide the impugned order the Ld. CIT (Appeals) has upheld the imposition of penalty amounting to Rs. 1,68,400/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter called the 'Act').

2. The brief facts of the case are the return of income was filed declaring income of Rs. 68,39,060/- and the assessment was completed u/s 143(3) of the Act after making an addition of Rs. 5,44,744/- by disallowing excess deduction claimed by the assessee u/s 36(1)(viii) of the Act. During the assessment proceedings, the AO had noticed that the assessee had transferred to statutory reserve, an amount of Rs. 22,79,684/- being 25% of the 'net profit' whereas the assessee was allowed to transfer to reserve @ of only 20%. Penalty proceedings were initiated subsequently and penalty was imposed for furnishing inaccurate particulars of income. On appeal, this penalty was confirmed by the Ld. CIT (Appeals). Now the assessee is before the ITAT and has challenged the upholding of penalty by the Ld. CIT (Appeals).

3. The Ld. Authorised Representative submitted that the assessee is a Co-operative Bank registered under the U.P. Co-operative Societies Act, 1965 and has been carrying on the banking business for more than 15 years. It was submitted that as per the U.P. Cooperative Society's Act, the assessee bank was obliged to transfer 20% of the net profit to the general reserve account. However, due to inadvertent error, the assessee transferred 25% of the net profits to the general reserve account. It was submitted that this was a bona fide mistake on the part of

the assessee and it was not a case of furnishing inaccurate particulars of income. It was further submitted that all the facts relevant for the computation of income were already before the AO and it could not be said that there was any furnishing of inaccurate particulars on the part of the assessee. It was submitted that the assessee was not aware that as per the Co-operative Society Act only 20% of the net profits had to be transferred to the general reserve account and this was a bona fide mistake on the part of the assessee. The Ld. Authorised Representative also submitted that during the year under appeal the assessee had paid tax to the tune of Rs. 21,67,670/- on the taxable income and, therefore, an additional amount of tax of Rs. 1,68,400/- was a meager amount to have been sought to be evaded by the assessee. It was prayed that the penalty be deleted.

4. In response, the Ld. Sr. Departmental Representative placed reliance on the orders of the authorities below and vehemently argued that the penalty had been rightly imposed. It was further submitted that had the assessee's excess transfer to the reserve not been detected during the course of assessment proceedings, the income to that extent would have remained untaxed.

5. We have heard the rival submission and have also perused the relevant material on record. It is seen that the Assessing

Officer, in the penalty order, has observed that the assessee has furnished inaccurate particulars. The AO has held that the act of transfer of excess amount to the reserve was an act of furnishing of inaccurate particulars of income. The Ld. CIT (Appeals) has noted that the explanation of the assessee regarding inadvertent error was not tenable. However, with regard to the provisions of section 271(1)(c) of the Act pertaining to penalty, the Hon'ble Apex Court has authoritatively laid down that making of a claim by the assessee which is not sustainable will not tantamount to furnishing inaccurate particulars. In CIT vs. Reliance Petroproducts Pvt. Ltd. (supra), the Hon'ble Apex Court has held as follows:

“A glance at this provision would suggest that in order to be covered, there has to be concealment of particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The present is not a case of concealment of income. That is not the case of the Revenue either. However, the Ld. Counsel for the revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the section 271 (1) (c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no

information given in the return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The learned counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income." We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars."

5.1 Although, both the lower authorities have held that the assessee has furnished inaccurate particulars of income, on an overall consideration on the facts, such a view is not tenable in the present appeal. Therefore, respectfully following the judgment of the Hon'ble Apex Court in the case of Reliance Petroproducts Pvt. Ltd. (Supra) we set aside the impugned orders and direct the AO to delete the penalty.

6. In the final result the appeal of the assessee stands allowed.

Order pronounced in the open court on 27.11.2018

Sd/-

**(O.P.KANT)
ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 27.11.2018

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date of dictation | 26.11.2018 |
| Date on which the typed draft is placed before the dictating Member | 26.11.2018 |
| Date on which the typed draft is placed before the Other Member | 26.11.2018 |
| Date on which the approved draft comes to the Sr. PS/PS | 27.11.2018 |
| Date on which the fair order is placed before the Dictating Member for pronouncement | 27.11.2018 |
| Date on which the fair order comes back to the Sr. PS/PS | 30.11.2018 |
| Date on which the final order is uploaded on the website of ITAT | 30.11.2018 |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |

