

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA**

Before **Shri S.S.Godara, Judicial Member** and
Shri, M. Balaganesh, Accountant Member

ITA No.576/Kol/2017
Assessment Year :2012-13

DCIT, Circle-3(2), MB-210, Shaidpur, Port Blair-74416	V/s.	Andaman & Nicobar State Co-operative Bank Ltd., MA Road, Phoenix Bay, Port Blair-744101 [PAN No.AAAJT 1043 Q]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Saurbh Kumar, Addl. CIT-SR-DR
प्रत्यर्थी की ओर से/By Respondent	None
सुनवाई की तारीख/Date of Hearing	15-11-2018
घोषणा की तारीख/Date of Pronouncement	30-11-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This Revenue's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-1 Kolkata's order dated 09.12.2016 passed in case No.1775/cia-1/Circle-3(2)P.B/2014-15 reviving Assessing Officer's action imposing penalty of ₹56,31,415/- in proceeding u/s 271(1)(c) of the Income Tax Act, 1961; in short 'the Act'.

Case called twice. None appears at assessee's behest. It is accordingly proceed ex parte against assessee in the instant case.

2. The Revenue's sole substantive ground pleaded in this instant appeal seeks to revive the Assessing Officer's action imposing penalty u/s 271(1)(c) of ₹56,31,415/- in his order dated 26.08.2015 as reversed in the CIT(A)'s order under challenge as follows:-

"I have considered the A.O's finding and perused the written submission along with the assessment order. The A.O. had impose the penalty Under Section

271(1)(c) of the I.T. Act, in respect of disallowance of Rs.1,82,24,646/- in respect of provisions for bad & doubtful debts, holding that the appellant had made a "**provision of NPA**" which was not allowable for Provision for bad & doubtful debts. The A.O. had thus held that the appellant had committed a default by furnished inaccurate particulars of its income in its audit report and there by concealed the income of Rs.1,82,24,646/- and the penalty of Rs.56,31,415/- at the rate of 100% of the tax sought to be evaded was imposed by the A.O.

The appellant's A.R. had mainly contended through the written submission that the appellant had filed the appeal before the CIT(A), against the quantum addition made by the A.O. through the appellate order no.1066/CIT(A)-1/C-3(2) P.B./2014-15, for A.Y.2012-13, the addition of Rs.1,82,24,646/- was deleted by relying on the decision of the ITAT, of Chennai, co-operative bank Ltd. in ITA No., 1961 no. 948/2013 dated 21.01.2014 where in it was held that if the assessee had created provision of bad & doubtful debts under nomenclature this entitled the assessee Under Section 36(viia).

The appellant's A.R. had argued that it had furnished the complete particulars in the return of income during the assessment proceedings and had not acted with any mala fide intension with income thereof. The A,R. has also contended that the impugned addition of Rs.1,82,24,646/- was made by the A.O. on a debatable issue by adopting a different opinion and thus had not acted with mala fide intention to conceal the income or particulars thereof. For this proposition reliance was placed on the decision of the Hon'ble Supreme Court in the Case of In the case of CIT Vs Reliance Petro products Pvt. Ltd, 322 ITR (SC) the Hon'ble Supreme Court pointed out that the disallowance made by the assessing authority in the assessment order of the Act were solely on account of difference views taken on the same set of facts and therefore, they could, at the most, be termed as difference of opinion but nothing to do with the concealment of income or furnishing of inaccurate particulars of such income,

The Appellant has also relied upon the judgemtn of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v. State of Orissa 83 ITR 26, wherein it was held that the Assessing Officer is not bound to levy penalty automatically simply because the quantum addition has been sustained. Also in case of CIT v. KhodayEswara (83 ITR 369)(SC) reported in same ITR Volume, it is held that Penalty cannot be levied solely on basis of reasons given in original order of assessment. The hon'ble Supreme Court has reiterated the law in case of Dilip N. Shroff v. Jt.- CIT [2007] 291 ITR 519 by holding in .. para 62 that finding in assessment proceedings cannot automatically be adopted in penalty proceedings and the authorities have to consider the matter afresh from different angle.

In view of the above discussion, it is found that on merits of the issue in dispute i.e. disallowance of provision for NPA, held by the A.O. as not allowable as bad debts Under Section 36(viia) of the Act. The issue involved was a debatable issue on which more than one view was possible and taken by the A.O, who adopted a different opinion. The appellant's claim was thus

not in the nature of a false claim or could be said to tantamount to furnishing of incorrect particulars of income. Considering the factual position that the appellant had made a complete and full disclosure of the relevant particulars of the transactions in its return of income, and thus its conduct could not be turned as mala fide or contumacious. Therefore, I am of the opinion that the appellant's case is covered by ratio of cited case laws, and is covered by the ratio of the Hon'ble Apex Court's decision in the case of CIT Vs Reliance Petro products Pvt. Ltd. (supra) which is applicable to the facts of the case. Hence, there is no scope for levy of penalty Under Section 271(1)(c) of the LT. Act, 1961 as there was no concealment of income or furnishing of inaccurate particulars. Therefore, the A.O. was not justified in imposition of penalty amounting to Rs. 56,31,415/- . Accordingly, the penalty of Rs. 56,31,415/- is directed is to be deleted. These grounds are allowed."

3. Learned Departmental Representative vehemently contends during the course of hearing that the CIT(A) has erred in law as well as on facts in deleting the impugned penalty. We find no merit in Revenue's instant grievance. This taxpayer is a co-operative society. It claimed sec. 36(1)(viiia) bad debts deduction allowable for a co-operative society / bank assessee. The Assessing Officer disallowed the same holding that it had made only an NPA provision rather than a provision for bad and doubtful debts. We are informed during the course of hearing that this quantum disallowance has already attained finality.

5. Coming to the impugned penalty, the Assessing Officer held in his order dated 26.08.2015 that the assessee had furnished inaccurate particulars of income as well as concealed its taxable income to the extent of its sec. 36(1)(viiia) claim amount of ₹1,82,24,646/-. The CIT(A) has accepted assessee's arguments hereinabove challenging correctness thereof during the course of lower appellate proceedings.

6. We have given our thoughtful consideration to the rival Revenue's grievance. Case file perused. We make it clear first of all that hon'ble apex court's landmark decision in *CIT vs. Reliance Petroproducts Pvt Ltd. (2010) 322 ITR 158 (SC)* held long back that quantum and penalty proceedings are parallel in nature wherein each and every disallowance / addition made in the course of the former does not automatically invite the latter penal provision. We keep in mind the said fine distinction to revert back the facts in the instant

case. The assessee had claimed bad debts deduction which stood disallowed in quantum proceedings being in the nature of an "NPA" provision only. It therefore appears a case of pure disallowance simplicitor on account of failure in fulfilling the mandatory condition and not an instance of concealment or furnishing of inaccurate particulars of income. The CIT(A) has taken into consideration all the relevant facts and circumstance to conclude that assessee's impugned claim does not attract either of the two limbs (supra) u/s 271(1)(c) of the Act. We confirm the same in view of our foregoing discussion.

7. This Revenue's appeal is dismissed.

Order pronounced in the open court 30/11/2018

Sd/-
(लेखा सदस्य)
(M.Balaganesh)
(Accountant Member)
Kolkata,
*Dkp, Sr.P.S

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

दिनांक:- 30/11/2018 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, Cir-3(2), MB-210, Shaidpur, Port Blair-74416
2. प्रत्यर्थी/Respondent-Andaman & Nicobar State Co-Op Bank Ltd.MA Road, Phoenix Bay, Port Blair-744101
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।