

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI PAWAN SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2742/MUM/2016
Assessment Year: 2010-11**

The Hindustan Co-
Operative Bank Ltd.
4-A, Devi Galli, Baburao
Bobde Marg, Lokhand
Bazar, Mumbai-400009

PAN No. AABAT4355R
Appellant

ACIT-13(3), Aayakar
Bhavan, Mumbai.
Vs.

Respondent

Assessee by : Mr. Ravi Sawana, AR
Revenue by : Mr. D.G. Pansari, DR

Date of Hearing : 15/03/2019
Date of pronouncement : 25/03/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-28 Mumbai [in short 'CIT(A)'] and arises out of the levied penalty u/s 271(1)(c) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

1. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the levy of penalty under section 271(1)(c) of the I.T Act

because of addition of Rs.7,23,140/- due to collection collected and credited to building fund.

2. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the levy of penalty under section 271(l)(c) of the I.T Act because of disallowance of Rs.5,00,647/-due to excess depreciation pertaining to AY 2010-11.
3. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the levy of penalty under section 271(1)(c) of the I.T Act because of addition of Rs.97,129/-being shortfall in the commission income.
4. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the levy of penalty under section 271(1)(c) of the IT Act even when the penalty was initiated in the assessment order for 'furnishing inaccurate particulars' and levied in the penalty order for 'wilful concealment.
5. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the levy of penalty under section 271(1)(c) of the IT Act even when the penalty notice under section 274 of the IT Act, did not strike out the inapplicable limb of section 271(1)(c).

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2010-11 declaring total income of Rs.5,60,36,119/-. The Assessing Officer (AO) completed assessment u/s 143(3) dated 26.03.2013 on a total income of Rs.6,44,62,080/-. The issue in dispute in the instant case is the penalty levied by the AO, subsequently confirmed by the Ld. CIT(A) on the following additions /disallowances:

- (i) collection collected and credited to building fund of Rs.7,23,140/-,
- (ii) disallowance of excess depreciation of Rs.5,00,647/- and

(iii) commission income accounted short of Rs.97,129/-.

4. The Ld. counsel of the assessee begins with the 3rd ground of appeal. It is stated by him that in the notice u/s 274 r.w.s. 271 of the Act for the impugned assessment year, the inappropriate words and paragraphs have not been deleted as is evident from the fact that both “concealed the particulars of your income and furnished inaccurate particulars of such income” appear together. The Ld. counsel relies on the decision in *CIT v. Samson Perinchery* (2017) 88 taxmann.com 413 (Bombay), *CIT v. Manjunath Cotton & Ginning Factory* (2013) 35 taxmann.com 250 (Karnataka), *Meherjee Cassinath Holdings (P.) Ltd. v. ACIT* [2017] 88 taxmann.com 777 (Mumbai-Trib).

Further it is explained by him that in the assessment order, the AO has initiated penalty on the ground that the assessee had furnished inaccurate particulars in respect of the above income, whereas in the penalty order the AO levied penalty on concealment of income.

On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

5. We have heard the rival submissions and perused the relevant materials on record. In the instant case, we find that in the assessment order dated 26.03.2013, the AO has initiated the penalty for filing inaccurate particulars of the income (para 11 of the order), whereas in the penalty order dated 30.09.2013, he concluded with levy of penalty for concealment of income.

In *CIT vs. Samson Perincherry* (ITA No. 953, 1097, 1154 & 1226 of 2014), the Hon'ble Bombay High Court held:

“Therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under Section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/permit penalty being imposed for the other breach. This is more so, as an Assessee would respond to the ground on which the penalty has been initiated/notice issued. It must, therefore, follow that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the assessee has no notice.”

5.1 Respectfully following the above decision of the Hon'ble Bombay High Court, we delete the penalty u/s 271(1)(c) confirmed by the Ld. CIT(A).

6. In the result, the appeal is allowed.

Order pronounced in the open Court on 25/03/2019

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 25/03/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai