

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'B', BENGALURU

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.360/Bang/2017
(Assessment Year : 2010-11)

M/s. Regional Oilseeds Growers Cooperative Societies Unon Ltd,
Plot No.74/A, KIADB Industrial Area,
Kelagote, Chitradurga 577501 .. Appellant
PAN : AACFR0370E

v.

Joint Commissioner of Income-tax,
Davangere Range, Davangere .. Respondent

Assessee by : Shri. Sandeep C, CA
Revenue by : Smt / Shri. Kapila H, JCIT

Heard on : 26.03.2019
Pronounced on : 29.03.2019

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the assessee, against the order of the CIT (A), Gulbarga, dt.29.12.2016, for the assessment year 2010-11, on the following grounds of appeal :

2. The learned Commissioner of Income Tax (Appeals) erred in law and on facts in levying penalty u/s 271(1)(c) of the Act.
3. The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the levy of penalty even though no satisfaction was recorded regarding concealment or furnishing of any inaccurate particulars of income alleged to have been made in original return in the original proceedings u/s 143(3) of the Act and the recording of the satisfaction in a proceeding u/s 147 of the Act is not sufficient to levy penalty u/s u/s 271(1)(c) of the Act.
4. That the penalty u/s 271(1)(c) is bad in law as the notice u/s 274 is vague.
5. The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming penalty u/s 271(1)(c) even though the claim made by the appellant u/s 80P(2) is a bonafide claim.
6. That the penalty u/s 271(1)(c) is bad in law as the learned Commissioner of Income Tax (Appeals) has not recorded his satisfaction properly in the assessment order.

02. It was submitted by the Ld. AR that the Tribunal vide order dt.05.09.2018 in ITA Nos.1352 to 1355/Bang/2016, had decided the quantum appeal in favour of the assessee, wherein at paras 6.2 and 6.3, it was held as under :

6.1 On the substantive issue of the disallowance of the assessee's claim for deduction under Section 80P of the Act, since the jurisdictional issues, namely non-furnishing of reasons recorded, validity of issued notices issued under Section 148 of the Act and validity of assumption of jurisdiction by the JCIT in passing the impugned orders of assessment have been remanded back to the file of the Assessing Officer for fresh consideration, in our considered view, adjudication on the substantive issue in the appeals at this stage would be premature. If the issue of notice and passing of orders fail to pass the test, in the light of our directions issued above, the impugned orders of assessment, having no legs to stand on, will fail and consequently so too with the disallowances made. We, therefore, refrain from adjudicating on the substantive issue of allowability of the assessee's claim for deduction under Section 80P of the Act.

6.2 It may however be mentioned that the Assessing Officer has disallowed the assessee's claim for deduction under Section 80P of the Act, inter alia, on the issue that the assessee is a federation of societies and other members and

hence the concept of who constitute "Members" is very relevant. We also observe that the Assessing Officer, has rendered a finding that the sales are made to agencies other than members, by invoking the principle of mutuality. We find that the Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd. (397 ITR 1) (SC), in the context of credit co-operative societies has ruled on these two principles while deciding the issue of deduction under Section SOP of the Act. The Assessing Officer is directed to consider the principles enunciated in the aforesaid decision of the Hon'ble Apex Court (supra) while passing orders, after considering the jurisdictional issues remanded back.

03. On the basis of the above, it was submitted that the action of the AO to levy penalty no more subsists because the quantum addition has already been set aside and remanded back to the AO. Therefore the penalty proceedings pending before this Tribunal is also required to be set aside.

04. Per contra, the Ld. DR relies on the orders of the lower authorities.

05. We have heard the rival contentions and perused the material on record. The penalty proceedings were initiated on the basis of the order passed by the AO, whereby the AO had made the addition and thereafter had recommended for imposition of penalty u/s.271(1)(c) of the Act, of Rs.6,65,805/-, for furnishing inaccurate particulars of income. Since the order by which the quantum was added and the AO came to the conclusion that the assessee had furnished inaccurate particulars of income ceases to exist, on account of being set aside by the Tribunal, the initial cause of levy of penalty does not exist, we have no hesitation to delete the

penalty pursuant to order passed by the AO dt.05.02.2014. However it will be open for the AO to initiate the penalty proceedings. In case in the remand proceedings the AO comes to a conclusion that this is a case for imposition of penalty as the assessee has either filed inaccurate particulars of income or had concealed the income, penalty proceedings may be initiated again in accordance with law.

06. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 29th day of March, 2019.

Sd/-

(A. K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Bengaluru

Dated : 29.03.2019

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.