

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
and  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.2830/Del./2015  
(ASSESSMENT YEAR : 2004-05)**

**ITA No.2831/Del./2015  
(ASSESSMENT YEAR : 2005-06)**

**ITA No.2832/Del./2015  
(ASSESSMENT YEAR : 2006-07)**

**ITA No.2833/Del./2015  
(ASSESSMENT YEAR : 2007-08)**

**ITA No.2834/Del./2015  
(ASSESSMENT YEAR : 2009-10)**

The Mantola Cooperative Thrift & vs. ITO, Ward 38 (4),  
Credit Society, New Delhi.  
541, Mantola, Paharganj,  
New Delhi – 110 055.

**(PAN : AAAJT1976A)**

**(APPELLANT)**

**(RESPONDENT)**

**ASSESSEE BY : Shri Gaurav Jain, Advocate  
Ms. Deepika Agarwal, Advocate  
Shri Arpit Goyal, CA**

**REVENUE BY : Ms. Naina Soin Kapil, Senior DR**

Date of Hearing : 30.05.2019

Date of Order : 12.06.2019

**ORDER**

**PER BENCH :**

Since common questions of facts and law have been raised in all the aforesaid appeals, the same are being disposed off by way of composite order to avoid repetition of discussion.

2. Appellant, The Mantola Cooperative Thrift & Credit Society, (hereinafter referred to as 'the assessee'), by filing the present appeal sought to set aside the impugned order dated 27.02.2015 passed by the Commissioner of Income-tax (Appeals)-XX, New Delhi, affirming the penalty order dated 03.01.2014 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), qua the assessment years 2004-05, 2005-06, 2006-07, 2007-08 & 2009-10 on the identical grounds, except the difference in penalty amount, inter alia that :-

***“1. That on the facts and in the circumstances of the case, the CIT(A) erred in law in not appreciating the penalty order dated 03.01.2014 passed by the assessing officer under section 271(1)(c) of the Income-tax Act, 1961 ('the Act') imposing penalty (Rs.30,05,960/-, Rs.26,24,503/-, Rs.23,53,217/-, Rs.20,91,892/- & Rs.51,96,443/- for AYs 2004-05, 2005-06, 2006-07, 2007-08 & 2009-10 respectively), since the said order is without jurisdiction, bad in law and void-ab-initio in as much as the penalty proceedings were initiated without valid satisfaction being recorded in the assessment order.***

***1.1 That on the facts and circumstances of the case, the CIT(A) erred in law in holding that valid satisfaction was recorded by the assessing officer in the assessment order.***

*Without prejudice*

**2. That the CIT(A) erred on facts and in law in holding that the appellant had concealed and furnished inaccurate particulars of income qua claim of deduction under section 80P(2)(a)(i) of the Act on interest income earned from fixed deposits with Banks, warranting imposition of penalty under section 271(l)(c) of the Act.**

**2.1 That on, the CIT(A) erred on the facts and in law in not appreciating that all material facts/ particulars relating to aforesaid claim were truly, fully and accurately furnished and disclosed by the appellant in the return of income and accompanying documents, as also during the course of the assessment proceedings.**

**2.2 That the CIT(A) erred on facts and in law in holding that the appellate had furnished inaccurate particulars in view of the decision of the Apex Court in the case of Totgar's Cooperative Sale Society: 322 ITR 383 wherein the interest income derived from deposits made in scheduled banks have been treated as "income from other source".**

**2.3 That the CIT(A) erred on facts and in law in failing to appreciate that the disallowance of deduction made under section 80P of the Act, made in the quantum proceedings was debatable in nature and predicted on bonafide difference of opinion between the appellant and the assessing officer.**

**3. Without prejudice, that the CIT(A) erred on facts and in law in upholding the amount of penalty (Rs.30,05,960/-, Rs.26,24,503/-, Rs.23,53,217/-, Rs.20,91,892/- & Rs.51,96,443/- for AYs 2004-05, 2005-06, 2006-07, 2007-08 & 2009-10 respectively) imposed by the assessing officer, without appreciating that since the appellant was alternatively eligible for deduction under section 80P, in terms of sub-section (2)(d) and sub-section (4) thereof, the entire deduction was not inadmissible and consequently the amount of penalty imposed was also incorrect.”**

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : The assessee is a cooperative thrift and credit society providing credit facility to its members. ON the basis of assessments framed under section 143 (3)/147 of the Income-tax Act, 1961 (for short 'the Act') for Assessment Years 2004-05, 2005-06, 2006-07 & 2007-08 and assessment framed u/s 143 (3) of the Act for AY 2009-10, penalty proceedings have been initiated for furnishing inaccurate particulars of income by claiming deductions u/s 80P of the Act which was disallowed by the AO and allowed by the Id. CIT (A), however the Tribunal has reversed the order of the CIT (A) confirming the disallowance made by the AO. Declining the contentions raised by the assessee, AO levied the penalty of Rs.30,05,960/-, Rs.26,24,503/-, Rs.23,53,217/-, Rs.20,91,892/- & Rs.51,96,443/- for AYs 2004-05, 2005-06, 2006-07, 2007-08 & 2009-10 respectively @ 100% of the tax sought to be invaded u/s 271(1)(c) of the Act.

4. Assessee challenged the penalty order by way of appeals before the Id. CIT (A) who has affirmed the penalty orders by dismissing the appeals. Feeling aggrieved, the assessee has come up before the Tribunal by challenging the penalty orders passed u/s 271(1)(c) of the Act.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Ld. AR for the assessee challenging the impugned order contended inter alia that the penalty cannot be levied where there is debatable/vexed legal issue; that assessee has disclosed the facts fully and truly and as such, disallowance of deduction claimed does not attract the provisions of section 271(1)(c) of the Act; that *Totgar's Cooperative Sale Society 322 ITR 283* case relied upon by the AO for levying penalty is not applicable to the facts and circumstances of the case and relied upon the decisions cited as *Guttigedarara Credit Cooperative Society Ltd. vs. CIT 377 ITR 464 (Kar)*, *CIT vs. Shree Siddeshwar Souhardhana Sahakari Niyamit ITA No.5019/2012 (Kar.)*, *Tumkur Merchants Souharda Credit Cooperative Ltd. vs. CIT 230 taxman 309 (Kar.)*, *ITO vs. Vidarbha Premier Cooperative Housing Society 184 TTJ 145 (Nag ITAT)*, *CIT vs. Devsons Logistics (P) Ltd. 329 ITR 483 (Del.)*, *CIT vs. Nalwa Sons Investments Ltd. 327 ITR 543 (Del.)*, *CIT vs. Deban International Ltd. ITA No.496 of 2009*, *ACIT vs. Delhi International Airport (P.) Ltd. (2018) 89 taxmann.com 326 (Delhi – Trib.)*, *Ganesh Land Organisation vs. CIT 168 ITR 527*,

*CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158, PCIT vs. Samtel Ltd. ITA No.43 of 2017 & CIT vs. Amit Jain 351 ITR 74.*

7. However, on the other hand, ld. DR for the Revenue in order to repel the arguments addressed by the ld. AR for the assessee relied upon the order passed by the AO/ld. CIT (A) and contended inter alia that *Totgar's Cooperative Sale Society's* case (supra) is squarely applicable to this case; that when assessee has made a wrong claim of deduction it tantamounts to concealment and relied upon the decisions of *CIT vs. Escorts Finance Ltd. 328 ITR 44, Steel Ingots Ltd. vs. CIT 296 ITR 228, CIT vs. Zoom Communication (P.) Ltd. 327 ITR 510 (Delhi), CIT vs. Gates Foam & Rubber Co. 91 ITR 467, CIT vs. India Seafood 105 ITR 708 & M/s. New Holland Tractor (India) (2014) 49 taxmann.com 573 (Delhi).*

8. Undisputedly, the assessee has brought on record full and true facts while claiming deduction u/s 80P of the Act. It is also not in dispute that Hon'ble High Court upheld the disallowance of deduction claimed u/s 80P(2)(a)(i) on interest income earned from commercial bank but has set aside the matter back to CIT (A) to decide upon the alternative plea of assessee qua deduction of interest income earned of deposits made with cooperative banks/societies u/s 80P(2)(d) of the Act and netting off of proportionate expenses against the interest. It is also not in dispute that against the order of Hon'ble

High Court, assessee approached the Hon'ble Supreme Court by way of filing Special Leave Petition in which leave has been granted vide order dated 18.09.2017, order available at page 37 of the paper book.

9. In the backdrop of the undisputed facts, arguments addressed by the Id. Authorized Representatives to the parties to the present appeals, the first question arises for determination in this case is :-

***“as to whether penalty levied u/s 271(1)(c) of the Act is not sustainable when issue is still debatable by virtue of special leave petition pending disposal in the Hon'ble Supreme Court in which leave has been granted as contended by the assessee?”***

10. First of all, when we examine the factual matrix of this case wherein deduction claimed by the assessee was disallowed by the AO, but accepted and allowed by Id. CIT (A) but subsequently the Tribunal and Hon'ble High Court reversed the order passed by the Id. CIT (A) and restored the order of AO qua disallowance of deduction claimed by the assessee under section 80P and then leave has already been granted by Hon'ble Supreme Court in SLP filed by the assessee, it apparently appears that the question is debatable.

11. Hon'ble Delhi High Court in case cited as ***CIT vs. Devsons Logistics (P) Ltd.*** (supra) held that :-

***“(v) that divergent views amongst Departmental authorities in respect of both the additions positively indicated that it would be unsafe to infer that the***

*assessee was guilty of concealment of income or furnishing of inaccurate particulars thereof.”*

12. Hon’ble Delhi High Court further held with the caveat of course is that the assessee must have placed all his cards on the table by disclosing each and every fact to the Departmental authorities or the court concerned. If the assessee does so then merely because the Departmental authorities concerned or the High Court concerned does not concur with the legal stand adopted by the assessee, that will not be reason enough to hold that the assessee is guilty of concealment of income or furnishing of inaccurate details.

13. But, in the instant case, the assessee is on more sound footing because the order passed by the Hon’ble High Court qua disallowance of deduction u/s 80P(2)(a)(i) of the Act has been challenged by way of filing SLP in which leave has been granted vide order dated 18.09.2017 under Article 136 of the Constitution of India.

14. Hon’ble Gujarat High Court in case cited as ***Ganesh Land Organisation*** (supra) held that special leave is granted by the Hon’ble Apex Court in exceptional cases where substantial and grave injustice is shown to have been done. In other words, the grant of special leave depends on whether there is substantial question of law of public interest. So, we are of the considered view that when

substantial question of law is involved in this case qua disallowance of deduction claimed by the assessee u/s 80P of the Act, penalty cannot be levied.

15. So far as question of applicability of *Totgar's Cooperative Sale Society's* case (supra) as relied upon by the AO as well as Id. DR for the Revenue is concerned, we are of the considered view that when substantial question of law has been arisen in this particular case to be decided by the Hon'ble Apex Court in the SLP filed by the assessee challenging the order passed by the Hon'ble Delhi High Court, provisions contained u/s 271(1)(c) of the Act by applying *Totgar's Cooperative Sale Society's* case (supra) are not attracted because issue in question is still debatable.

16. Special leave to appeal is granted by Hon'ble Apex Court in rarest of rare case as in the ordinary circumstances assessee has no right to appeal. So, we are of the considered view that when issue as to the disallowance of deduction claimed by the assessee u/s 80P is pending adjudication before the Hon'ble Apex Court, the assessee cannot be fastened with the liability for concealment of income or furnishing of inaccurate particulars of income u/s 27(1)(c) of the Act.

17. In view of what has been discussed above, we are of the considered view that when issue as to deduction claimed by the assessee u/s 80P of the Act has not yet attained finality being pending

adjudication before the Hon'ble Apex Court, penalty levied u/s 271(1)(c) of the Act on account of disallowance of deduction claimed by the assessee u/s 80P of the Act is not sustainable in the eyes of law, hence penalty levied by the AO and confirmed by the Id. CIT (A) is ordered to be deleted. Consequently, appeals filed by the assessee are allowed.

**Order pronounced in open court on this 12<sup>th</sup> day of June, 2019.**

**Sd/-  
(ANADEE NATH MISSHRA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 12<sup>th</sup> day of June, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT (A)-XX, New Delhi
- 4.CIT
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**