

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 247/Rjt/2016
(निर्धारण वर्ष / Assessment Year : 2011-12)

Deputy Commissioner of Income Tax Circle-2, Jamnagar	बनाम/ Vs.	The Jamnagar District Co op Bank Ltd., Sahkar Bhavan, Ranjit Road, Jamnagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAJT0272B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Praveen Verma, Sr. D.R.
प्रत्यर्थी की ओर से / Respondent by :	None

सुनवाई की तारीख / Date of Hearing	07/05/2019
घोषणा की तारीख /Date of Pronouncement	17/06/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax(Appeals), Jamnagar ('CIT(A)' in short), dated 18.04.2016 arising in the assessment order dated 19.03.2014 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. As per its grounds of appeal, the Revenue has challenged the action of the CIT(A) in deleting the penalty of Rs.31,59,030/- imposed by the AO under s.271(1)(c) of the Act.

3. Briefly stated, the assessee is a Primary Cooperative Agricultural Society with its main object being advance of loans to farmers for agriculture. For the AY 2011-12 in consideration, the assessee *inter alia* claimed deduction of Rs.3,39,69,786/- as deduction under s.36(1)(viia) of the Act being an amount to the extent of profits available during the year. The AO restricted the claim of deduction to Rs.2,38,96,000/- as written off in the P&L account and rejected the remaining claim of deduction to the extent of Rs.1,00,73,786/-. The AO also invoked the provision of Section 271(1)(c) of the Act on such partial denial of deduction and imposed penalty quantified at Rs.31,59,030/- vide order dated 21.09.2015.

4. Aggrieved by the imposition of penalty, the assessee preferred appeal before the CIT(A). The assessee made detailed submission before the CIT(A) with which the CIT(A) concurred and granted relief from the levy of penalty to the assessee. The relevant paras of the order of the CIT(A) is reproduced hereunder:

“5. During the course of appellate proceedings AR of the appellant filed a written submission, as under:-

1. Section 271(1)(c) as was operative during the relevant year read thus:

*"271. (1) If the Assessing Officer or the (***) (Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that any person,*

(a)

(b)

*(c) has concealed the particulars of his income or (***) furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty,*

(i)

(ii)

(iii) *in the cases referred to in clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed (three times), the amount of tax sought to be evaded by reason of the concealment of particulars of his income or the furnishing of inaccurate particulars of such income.*

(***)

(Explanation 1. Where in respect of any facts material to the computation of the total income of any person under this Act.

*(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the (***) (Commissioner (Appeals) to be false, or*

(B) such person Offers an explanation which he is not able to substantiate (and fails to prove that such explanation is bonafide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him), then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.

2. *The Appellant would further like to submit that as per the above provision penalty can be levied if the assesses provide inaccurate details or concealed income and mere disallowance of claim would not amount to furnishing of inaccurate particulars of claim and will not attracts the penalty provisions.*
3. *The appellant would like to further submit that claim to the extent of available profit in hooks of accounts and in earlier year this practice was followed consistently. In the year under consideration we claimed deduction of Rs. 3,39,69,786/- to the extent of available profit and within permissible limit of deduction u/s 36(1)(viiia) read with rule 6ABA. However CIT(A) has restricted deduction to the extent of provision made in profit and loss account i.e. 2,38,96,000/-. This is mere different interpretation of law and disallowance but our claim was permissible and has basis for claim of Rs 3,39,69,786/- which assessing office failed to observe.*

4. *The appellant would also like to rely on the decision of the Hon'ble High Court In matter of CIT-14 Mumbai vs, Nalim P Shan (HUF) in I.T.A. No. 49 of 2013 that no penalty imposed despite unsustainable/non debatable claim by the assesses if duly disclosed by the assessee.*
5. *The appellant would like to further submit that in our case we have show the figures in the Profit and Loss accounts as well as in the Return of income and there will be no inaccurate particulars of income and the same is disallowed due to the different Interpretation adopted only and moreover in the following cases interpretation as adopted by us is also accepted so the same will not amount to non discloser of information because the same is only the debatable issue for which the law required to be decided.*
5. *We would also like to rely on the following decisions of the Honorable Courts in which the interpretation adopted by us is accepted in the case of Syndicate Bank reported in 78 ITD 103 the Honourable Tribunal held that irrespective of the Debit to the profit and loss account on account of provision for bad and doubtful debts, an assessee is entitled to 10% of Average Advances as deduction u/s 36(1)(viia) of the Act, The relevant Observation of the aforesaid decision was as follows :*

"20. The Ld. CIT has also acted under the misconception that deduction under Cl. (viia) is related to, the actual amount of provision made by the assesses for bad and doubtful debts. The true meaning of the clause, as indicated earlier, is that once a prevision for bad and doubtful debts is made by a scheduled bank having rural branches, the assessee is entitled to a deduction, but with respect to a certain percentage of the total income and also a certain percentage of the aggregate average advances made by the rural branches of the bank. In other words, this is a specific deduction given by the statute irrespective of the quantum provided by the assesses in its accounts towards provision for bad and doubtful debts."
7. *We would also like to rely on the decision of the Vijaya Bank, Bangalore vs. Department of Income Tax by the Honourable Tribunal ITA 578/Bang/2012 that Excess deduction made in the return of income than actual claimed made in the books of accounts are allowable.*
8. *The appellant would further like to submit that we have not hide any details or furnished the inaccurate*

particulars of income, issue being a legal and since all the facts were on thus record of the department, there is no question of any concealment or furnishing of any inaccurate particulars of income. At the most it is a legal issue where question of Interpretation is involved and Since in A.Y. 2007-08 and 2008-09 this issue has been decided in our favor on principles of Hon'ble ITAT, Rajkot.

9. *The appellant would further like to submit that the issue is highly debatable and even interpretation adopted by the Appellant have been accepted in some of the case by the Honorable Benches of Tribunal surf High Court and hence the same is not the furnishing of in accurate particulars but the Misinterpretation of the Particular Clause.*
10. *The Hon. apex Court in the case of CIT Vs. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (SC) has held that "merely because the Assesses, has claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, attract penalty u/s 271(1)(c). By any stretch of imagination, mining as incorrect claim in law cannot tantamount to furnishing inaccurate particualrs.*
11. *Moreover the Honorable Tribunal In appellant own case for the A.Y. 2009-10 deleted the penalty on the ground that the case is covered by the CIT Vs. Reliance Peto Products Pvt Ltd wherein held that “ merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that bty itself would not, in our opinion, attract the penalty under section 271(1)(c), if we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). This is clearly not the intendment of Legislature.” Respectfully following the Decision of the Honorable Apex Court in case of in case of CIT Vs. Reliance Petro products PVT. Ltd. (supra) and in the facts of the case, that the assessee has disclosed material facts on the issue of its claim of deduction at the time of filling of return itself, and conduct of the assesses being bonafide, and the issue of deduction being legal and highly debatable in nature, for which two view are possible, I hold that it is not a fit case for the issue of penalty levied under section 271(1)(c) is decided in favor of the assessee, against the revenue, and accordingly, I agree with the proposed order of the Ld. JM on the issue of cancellation of penalty under*

section 271(1)(c) of the Act, and points of differences referred to me by the Ld. JM and learned AM are answered accordingly.

12. *Reliance is placed in the matter decided by Supreme court CIT V. Skyline Ante Products (p) Ltd. (2004) 271 ITR 335 : (2005), that mere omission from the return of an item of receipt does neither amounts to concealment nor deliberate furnishing of inaccurate particulars of income unless and until there is some evidence to show or some circumstances found from which it can be gathered that the omission was attributable to an intention or desire on the part of the assessee to hide or conceal the income so as to avoid the imposition of tax thereon.*
13. *Reliance is placed on the above Delhi High Court in the case of CIT V. Valimkbhai H Patel (2006) held that if the explanation given by the Petitioner was bonafide, penalty u/s 271(1)(C) will not be attracted.*
14. *The petitioner would like to submit that in the lights of following facts and circumstances of the case, the Ld. AO is totally wrong, unjust and missing the proper verification of documents and records produced in confirming the Impugned Assessment Order.*
15. *In view of the facts and circumstances of the case and by considering the legal provision and even the Honorable Tribunal of different jurisdiction accepted the Interpretation adopted by the Appellant then the same would not amount to furnishing of the inaccurate particulars which call for a penalty u/s 271(1)(C) of the Act.*
16. *The Ld. AO has passed the biased order which is not based on the provisions of the Act but only on the surmise conjectures and suspicious to hit the petitioner which can be depicts from the above discussion also and in these case when the biased mind set involve lacks the principles of natural justice arid equity.*
17. *In these type of situation and circumstance, The petitioner request you honor kindly act objectively and mitigate the hardship and undue harassment to the petitioner. We request you honor to kindly consider the case in the lights of facts and circumstances of the case and set aside the Impugned assessment order in total and delete the addition made to the returned income,*

Rest is with you fine set of judgment and wisdom.

For the act of such Kindness, the petitioner win remain grateful forever. Needless to submit that en opportunity of being heard kindly be granted before taking any adverse, action.

Decision:

6. *I have duly considered the submission of the appellant and also gone through the discussion made in the penalty order.*

I am of the considered view that the case is not fit for levy of penalty u/s.271(1)(c) because the appellant has neither concealed its income nor has furnished any inaccurate particulars of income. Hence, penalty levied is hereby cancelled.”

5. Aggrieved by the deletion of penalty by the CIT(A), the Revenue is in appeal before the Tribunal.

6. The learned DR for the Revenue supported the penalty action of the AO and contended that the claim of deduction at larger amount under s.36(1)(viia) of the Act was made in contradiction to the statutory provisions of the Act. The learned DR submitted that the claim of Rs.3,39,69,786/- has no statutory basis whereas the figure of Rs.2,38,96,000/- as bad and doubtful debts and reserve accepted by the AO under s.36(1)(viia) of the Act is based on statutory tax audit report furnished by the assessee. The learned DR thus submitted that the excess claim made by the assessee in defiance of law would necessarily invite civil liability in the form of penalty under s. 271(1)(c) of the Act

7. The learned AR for the assessee, on the other hand, justified its action of higher claim deduction under s.36(1)(viia) of the Act. It was contended that the assessee is entitled to 10% of average advances as deduction irrespective of book claim in the P&L account towards provision for bad and doubtful debts. For this assertion, the assessee relied upon the decision of ITAT in the case of Syndicate Bank

reported in 78 ITD 103. The learned AR for the assessee also pointed out that in the similar facts and circumstances the penalty was imposed in the preceding assessment year i.e. AY 2009-10 in assessee's own case. The aforesaid penalty was deleted by the Tribunal having regard to the decision of Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. The aforesaid order of the Tribunal was challenged by the Revenue before the Hon'ble Gujarat High Court. The Hon'ble Gujarat High Court however upheld the order of the ITAT and observed that a bonafide raising of a wrong claim by itself would not give rise to penalty. It was further observed that the issue of eligibility of larger claim of deduction towards bad and doubtful reserve was debatable and there was no concealment of income *per se*. The learned AR accordingly submitted that the action of the CIT(A) cannot be faulted.

8. We have carefully considered the rival submissions. The controversy before us is whether AO was justified in imposing penalty under s. 271(1)(c) of the Act on account of reduction of eligible claim of bad and doubtful debts under s.36(1)(viia) of the Act. We find that identical issue arose in assessee's own case concerning AY 2009-10 before the ITAT. The penalty was deleted by the co-ordinate bench in the similarly placed facts which order was approved by the Hon'ble Gujarat High Court. The action of the assessee being bonafide and the issue being debatable, the larger claim of deduction *per se* cannot be bracketed in the league of 'concealment of particulars of income' or 'furnishing inaccurate particulars of income'. It is not in dispute that all the relevant facts were on record to enable the AO to formulate the opinion on the issue. This being so, there was no justification to invoke the provision of Section 271(1)(c) of the Act in the facts of the case. The CIT(A) in our view has rightly concluded the issue in favour of the assessee and against the Revenue notwithstanding the

fact that he has not assigned any reason and passed a perfunctory order while doing so. We must say at this juncture that the CIT(A) ought to have given some elementary reasons however brief it may be while determining the issue to enable higher appellate forum to understand the perspective. The ultimate conclusion of the CIT(A) however cannot be faulted in the instant case.

9. In the result, the appeal of the Revenue is dismissed.

This Order pronounced in Open Court on 17/06/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad: Dated 17/06/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT, Rajkot