

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC' NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER**

**ITA No. 459/Del/2018  
Assessment Year: 2014-15**

Power Welfare Organisation PWO Housing Complex, Plot No. GH-1A, Sector-43, Near Sushant Lok, D-Block, Gurgaon, Haryana. <b>PAN No. AAAAP3991J</b>	<b>vs</b>	ITO Ward 3(2) Gurgaon.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	<b>Shri Kunal Aggarwal, CA</b>
<b>Revenue by</b>	<b>Shri S.L. Anuragi, Sr. DR</b>

<b>Date of Hearing</b>	<b>01.08.2019</b>
<b>Date of Pronouncement</b>	<b>08.08.2019</b>

**ORDER**

This appeal filed by the assessee is directed against the order dated 04.10.2017 of the Ld. CIT(Appeals)-1, Gurgaon relating to AY 2014-15.

2. Levy of penalty of Rs. 8,36,962/- by the AO u/s 271(1)(c) of the Act which has been confirmed by the Ld. CIT(A) is the only issue raised by the assessee in the grounds of appeal.

3. Facts of the case, in brief, are that the assessee is a Group Housing Society consisting of 420 members. It receives monthly maintenance charges from its members and incurs the same for

the maintenance of the Society. The Society derives income from rent of shop, miscellaneous income and bank interest. It filed its return of income on 02.01.2015 declaring total income of Rs. 5,39,547/-. During the course of assessment proceedings, the AO noted that assessee has claimed interest income of Rs. 27,08,616/- as exempt on the ground of Principle of Mutuality. However, during the assessment proceedings, the assessee furnished revised computation of income and offered the same for taxation in the light of the decision of Hon'ble Supreme Court in the case of Bangalore Club vs. CIT reported in (2013) 29 taxmann.com 29. The AO, accordingly, completed the assessment on a total income of Rs. 32,48,163/- as per the revised computation of income filed by the assessee. The AO, thereafter initiated penalty proceedings u/s 271(1)(c) of the Act. Relying on various decisions the AO levied penalty of Rs. 8,36,962/- being penalty @ 100% on tax sought to be evaded on such interest income.

4. In appeal, the Ld. CIT(A) upheld the action of the AO in levying penalty u/s 271(1)(c) of the Act by observing as under:

*“4.3 I have carefully considered the appellant's submissions. Before discussing the merits of the case with regard to the imposition of penalty, it may be relevant to consider the chronology of events in this case. The same is as under:*

<i>Date</i>	<i>Remarks</i>
<i>14.01.2013</i>	<i>Decision to the Hon'ble Supreme Court in the case of Bangalore Club vs. CIT (supra) pronounced.</i>
<i>02.01.2015</i>	<i>Return of income filed by the appellant for AY 2014-15.</i>

29.09.2015	Notice u/s 143(2) issued by AO.
05.10.2015	Revised return filed by the appellant and taxes paid.

*From the aforesaid chronology of events it is evident that return of income was filed by the appellant after a period of almost two years from the date of pronouncement of the decision by the Hon'ble Supreme Court in the case of Bangalore Club (supra). The Hon'ble Supreme Court had finally settled the issue whether the interest received on FDRs is covered by the principle of mutuality or not. The Hon'ble Supreme Court had held that the interest received is not covered by the principle of mutuality. As such the issue was no more debatable and had attained finality. In these circumstances the claim that the interest income was covered by mutuality in the return filed almost two years after the pronouncement of judgment by the Hon'ble Supreme Court clearly tantamount to furnishing of inaccurate particulars of income. Merely because in the AY 2006-07, in the appellant's case the Hon'ble ITAT Delhi had allowed the appeal of the appellant on this issue does not absolve the appellant from contumacious conduct. It is evident that the appellant had taken a chance to file incorrect and inaccurate particulars of income by claiming that the interest income is not taxable knowing that only a small percentage of cases is taken up for scrutiny and as soon as the notice u/s 143(2) was issued, the appellant revised the return and paid the taxes on this income.*

*4.4 From all these facts discussed above, it is evident that the appellant had furnished inaccurate particulars of income. The penalty imposed by the Assessing Officer is accordingly confirmed. This ground of appeal is dismissed."*

5. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

6. Ld. Counsel for assessee submitted that as per the earlier decisions of various High Courts and Coordinate benches of the

Tribunal, the interest income was exempt on the basis of Principle of Mutuality. Only after the decision of Hon'ble Supreme Court in the case of Bangalore Club vs. CIT (supra) the same was held as taxable. Referring to the copy of the assessment order he submitted that there is no allegation on the part of the AO that the assessee has concealed the particulars of income or furnished inaccurate particulars. The assessee in *suomoto* has paid the tax after the same was brought to its notice. Referring to page 72 to 74 of the PB the Ld. Counsel for the assessee submitted that even for AY 2013-14 also the assessee has *suomoto* paid the tax on such interest income which was claimed as exempt on the basis of Principle of Mutuality. This shows the bonafide of the assessee. Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd. and various other decisions as per the PB filed, he submitted that merely because assessee has made a claim which was not accepted or was not acceptable to the Revenue, that by itself would not attract penalty u/s 271(1)(c) of the Act. He, accordingly, submitted that the penalty so levied by the AO and upheld by the CIT(A) should be deleted.

7. The Ld. DR on the other hand, heavily relied upon the order of the CIT(A). He submitted that despite the decision of the Hon'ble Supreme Court in the case of Bangalore Club (supra) the assessee has made an incorrect claim which attracts levy of penalty u/s 271(1)(c) of the Act. Therefore, the order of the CIT(A) sustaining the penalty so levied should be upheld.

8. I have considered the rival arguments made by both the sides and perused the orders of the AO and CIT(A). I have also gone through the various decisions cited before me. I find the AO in the instant case noticed that assessee has not offered to tax the amount of Rs. 27,08,616/- received by it on account of bank interest on the basis of Principle of Mutuality. It is an admitted fact that the assessee during the course of assessment proceedings had revised its computation of income and offered the same to tax which has been accepted by the AO and there is no further addition on this issue. I find the AO thereafter levied penalty of Rs. 8,36,962/- which has been upheld by the CIT(A) and the reasons for which have already been reproduced in the preceding paragraph. It is the submission of the Ld. Counsel for the assessee that the moment it was aware of the decision of the Hon'ble Supreme Court in the case of Bangalore Club vs. CIT (supra) it voluntarily and *suomoto* revised its computation of income and paid the taxes thereon. Even for the preceding year also the assessee has voluntarily and *suomoto* paid the tax on such interest income even though there was no reopening of such assessment or no scrutiny assessment or no 263 proceeding. I find force in the above argument of the Ld. Counsel for the assessee which shows its *bonafide*. The issue relating to chargeability of such interest income to tax was a highly debatable issue and it was settled by the Hon'ble Supreme Court in the case of Bangalore Club (supra) on 14.01.2013. Although the assessee has filed its return of income after period of almost 2 years,

however, it is also pertinent to note that the auditors who are supposed to be experts have neither advised the assessee nor given any comments on this issue. Further, the assessee during the course of assessment proceedings has voluntarily and *suomoto* revised its income and paid the taxes thereon. Even for the preceding assessment year also when there was no scrutiny or no reopening of the assessment, the assessee has voluntarily and *suomoto* paid the tax on such interest income, copy of which is placed at the PB. This definitely shows the *bonafides* of the assessee. Further, there is no allegation on the part of the AO in the entire assessment order regarding any concealment of income or furnishing of inaccurate particulars of income. The Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Ltd. reported in 189 taxmann 322 has held that merely because assessee has claimed an expenditure, which claim was not accepted or not acceptable to the Revenue, that by itself could not attract penalty u/s 271(1)(c) of the Act. In this view of the matter and considering the fact that the *bonafideness* of the assessee is not in doubt and the assessee has voluntarily and *suomoto* paid the tax on such interest income not only for this year but even for the preceding assessment year also without any scrutiny or reopening, I am of the considered opinion that it is not a fit case for levy of penalty u/s 271(1)(c) of the Act. I, therefore, cancel the penalty so levied by the AO and upheld by the CIT(A). The grounds raised by the assessee are accordingly allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 08/08/2018

Sd/-  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Dated: 08/08/2018

\*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	05.08.2019
Date on which the typed draft is placed before the dictating Member	06.08.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	09.08.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	09.08.2019
Date on which the fair order comes back to the Sr. PS/PS	09.08.2019
Date on which the final order is uploaded on the website of ITAT	09.08.2019
Date on which the file goes to the Bench Clerk	09.08.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

