

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**  
**AND**  
**SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.857/Ind/2018**  
**Assessment Year: 2009-10**

CIT,-2 Bhopal (Revenue)	<u>बनाम/</u> Vs.	Sewa Sahakari Samiti, Raisen Bharkacha (Respondent) PAN:AAFTS5908N
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**ITA No.858/Ind/2018**  
**Assessment Year: 2009-10**

CIT,-2 Bhopal (Revenue)	<u>बनाम/</u> Vs.	Krashak Sewa Sahakari Samiti, Maryadit, Bhaisaya Badi Raisen (Respondent) PAN:AAAANK9049E
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Revenue by	Smt. Ashima Gupta, CIT-DR
Respondent by	Shri Ashish Goyal & N.D. Patwa, Advs
<b>Date of Hearing:</b>	<b>18.11.2019</b>
<b>Date of Pronouncement:</b>	<b>22 .11.2019</b>

## **आदेश / O R D E R**

### **PER MANISH BORAD, A.M:**

The above captioned appeals filed at the instance of Revenue for A.Y. 2009-10 are directed against the separate orders of Learned Commissioner of Income Tax(Appeals)-2 Bhopal (in short 'CIT(A)'), dated 28.08.2018 which are arising out of the order u/s 271(1)(c) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 26.03.2015 by DCIT-5(1) Bhopal. As the issues raised in both appeals relates to different assessee are common in nature, therefore, these were heard together and are being disposed off by this common order for the sake of convenience and brevity.

2. The revenue has raised following grounds appeal in the case of Sewa Sahakari Samiti vide ITA No.857/Ind/2018:

*“Whether the Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) by holding that the concealment was not brought out in spite of the fact that no reply or submission as made by the assessee before the AO thereby indicating that he had no justification to put forth.”*

*2. Whether the CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) ignoring the principle that mere filing of profit & loss accounts and balance sheet by the assessee does not tantamount to full and complete disclosure of all material facts.”*  
*The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date; the appeal is finally heard for disposal.*

3. The revenue has raised following grounds of appeal in the case of Krashak Sewa Sahakari Samiti vide ITA No.858/Ind/2018:

*“1. Whether the Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) by holding that the concealment was not brought out in spite of the fact that no reply or submission was made by the assessee before the AO thereby indicating that he had no justification to put forth.”*

*2. Whether the CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) ignoring the principle that mere filing of profit & loss accounts and balance sheet by the assessee does not tantamount to full and complete disclosure of all material facts.”  
The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date; the appeal is finally heard for disposal.*

4. From perusal of the above grounds we observe that sole grievance of the Revenue in both these cases are against the deletion of penalty by the Ld. CIT(A) levied u/s 271(1)(c) of the Act by the Ld. AO.

5. Brief facts of the case are that both the assessees are cooperative societies and assessments u/s 143(3) of the Act were framed on 12.12.2011 after making following additions:

**Sewa Sahakari Samiti**

Disallowance of interest	52,90,726/-
Disallowance of provisions for bad and doubtful debts u/s 36(1)(viia)	<u>95,00,753/-</u>
<b>Total</b>	<u>1,47,91,479/-</u>

**Krashak Sewa Sahakari Samiti**

Disallowance of interest	51,59,870/-
Disallowance of provisions for bad and doubtful debts u/s 36(1)(viia)	<u>1,08,41,875/-</u>
<b>Total</b>	<u>1,60,01,745/-</u>

6. Subsequent to the framing of assessment order u/s 143(3) of the Act, penalty proceedings u/s 271(1)(c) of the Act were initiated. During the course of penalty proceedings Ld. AO did not find any merit in the submissions made by the assessee and he proceeded to levy the penalty at Rs.73,21,782/- & Rs.79,20,864/- computed @ 150% of the tax payable on concealed income in the case of Sewa Sahakari Samiti & Krashak Sewa Sahakari Samiti respectively.

7. Aggrieved assessee filed appeal before the Ld. CIT(A) and succeeded. Now the revenue is in appeal before the Tribunal.

8. Ld. Departmental Representative (DR) vehemently argued supporting the order of the Ld. AO and also placed reliance on the following judgments:

1. CIT vs. Zoom Communication (P.) Ltd.(2010) 327 ITR 510(Delhi High Court)
2. Union of India vs. Dharamendra Textile Processors (2007) 295 ITR 244 (SC)

9. On the other hand, Ld. counsel for the assessee argued at length referring to the following written submissions:

*A.Disallowance of Excess Interest*

*i. There was no concealment by assessee as the interest expenses were duly reflected in the profit and loss statement. The Ledger account of the 'Jila Sahkari Bank' was also produced and it was confirmed by CIT(A), that there was no doubt on the interest expense. The expenditure was genuine*

*ii. The Id CIT(A) in quantum proceedings, heavily relied on the Hon'ble Delhi High Court decision in case of 'Goodyear India Ltd Vs CIT reported in 2461TR 116'(Pg no. 6 of synopsis)*

*wherein it was held that when no adverse remark by Auditors are made in the audit report filed along with form 3CB and 3CD on interest debited to the P&L a/c still disallowance can be made.*

*The facts of the referred case of Goodyear India are different, in that case the Id CIT(A) went to the extent of asking the assessee as to whether it would be in a position to produce relevant details and vouchers before the AD in case a remand was made. There also it was categorically admitted that the vouchers and details cannot be produced before the AD. Obviously the authorities were left with no option except to disallow portion of the claim. The disallowance of expense was made in that case*

*In the present case, the interest exp was debited in P&I and the amount of loan taken with balance along with interest charged was duly submitted. (PB 10)*

*The copy of the Loan register containing members details to whom loan has been disbursed was also enclosed (See Submissions PB 11)*

*iii. In the Penalty order dated 26.03.2015, no cognizance of the above submissions by the assessee made during quantum proceedings was taken into consideration. The Id CIT(A) in Penalty proceedings considered all these facts and submissions and allowed the appeal. Thus, we rely on the findings of Id CIT(A).*

*iv. Perusal of Balance Sheet would show that the balance on asset side was mainly due to losses of Rs. 4,04,31,381.78/- (PB 57)*

*B. Disallowance of Provisions of bad, doubtful debts:*

*i. There was no concealment by assessee as the above provisions were duly reflected in the profit and loss statement.*

*ii. It was a bona-fide mistake on part of assessee, that from A.Y. 2007-08, the benefit of provisions for bad & doubtful debt u/s 36(1)(viii) was not available to assessee (Being Primary agricultural credit society). Even the return for A.Y. 2008-09 and A.Y. 2009-10 were accepted.*

*The assessee in a bonafide belief and relying on the audit report, could not add back the Provisions for bad & doubtful*

*debt.*

*Reliance is placed on the Hon'ble Supreme Court decision in case of 'Price waterhouse Coopers Private Limited Vs. CIT (2012) 348 ITR 306 (SC)' it was held that*

*"The contents of the tax audit report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting the return failed to add the provisions for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income."*

10. We have heard rival contentions and perused the record placed before us. The sole grievance of the assessee relates to deletion of penalty by the ld. CIT(A) levied u/s 271(1)(c) of the Act by the Ld. AO for the alleged furnishing of inaccurate particulars of income. We observe that the penalty has been levied on the additions relating to disallowance of interest and disallowance of provisions for bad and doubtful debts. The ld. AO has denied the claim of the expenditure made by the assessee. It is not the case that any particulars have been concealed or any incorrect information has been disclosed in the return of income and the audited balance sheet.

11. As regards the disallowance of interest, the allegation of the Ld. AO is that the assessee societies have kept interest bearing funds idle i.e. not fetching any interest income which led to disallowance of interest expenditure. In the similar fashion provision of bad and doubtful debts was denied.

12. Further, we observe that Ld. CIT(A) gave detailed finding of facts after following the judicial pronouncement applicable on the facts of the instant case observing as follows:-

*I have carefully considered the facts of the case, assessment order and the submission made by the appellant.*

*6. The AO has passed a very-very short and cryptic order. The concealment made by the appellant for which concealment penalty has been imposed has not been brought on record. Therefore, the facts have been ascertained from the assessment order, appellant order tax audit report and audited final accounts.*

*7. It is observed that both the disallowances on which penalty have been imposed were duly and fully disclosed by the appellant in the profit and loss account and balance sheet. Regarding disallowance of interest, both interest paid and interest received and the loans and advances received and extended on which such interest has been paid on received had been duly disclosed in the profit and loss account for the year. Further, various provisions made including provisions for bad and doubtful debts and interest payable etc. had also been duly shown in the profit and loss account and the balance sheet.*

*8. It is thus, evident from the above that the appellant had made the claim of interest expenses and provisions in the profit and loss account and balance sheet filed alongwith return of income. The AO has only disallowed certain expenses and provisions. The AO has not disallowed these items as a result of unearthing any undisclosed or concealed fact. It is settled law by Hon'ble Supreme Court in CIT vs. Reliance Petro products Pvt. Ltd. 322 ITR 158 that mere making a wrong claim does not amount to furnishing inaccurate particulars and that if the assessee makes certain claim of deduction and the same is not accepted by the AO, it does not mean that the assessee has*

*concealed the income for has furnished the inaccurate particulars and he is liable for levy of penalty u/s 271(1)(c).*

*9. The AO has imposed penalty for concealment of income. The expression has concealed the particulars of income has not been defined either in section 271(1)© or elsewhere in the Act. The word 'conceal' is derived from the Latin work concolare which implies to hide. Webster's New International Dictionary equates its meaning to hide or withdraw from observation; to cover or keep from sight, to prevent the discovery of to withhold knowledge of. The offence of concealment is thus a direct attempt to hide an item of income or a portion thereof from the knowledge of the income-tax authorities. It is observed that in the present case, it cannot be said that the appellant has concealed something.*

*10. The appellant has informed that in identical circumstances no disallowance of interest expenses has been made by the AO in the assessment for A.Y. 2013-14 and 2014-15. A copy of the assessment orders have been filed. In view of the same, the disallowance of interest made in the year under consideration cannot lead to imposition of concealment penalty.*

*11. Hon'ble Supreme Court in a case of CIT vs. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (Hon'ble Supreme Court), has observed as follows:-*

*"In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provisions cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. As the assessee had furnished all the details of its expenditure as well as income in its return, the details, in themselves were not found to be inaccurate nor would be viewed as the concealment of income on its part. It was upto the authorities to accept its claims in the return or not. Merely because the assessee had claimed the expenditure, the claim which was not accepted or was not acceptable to the revenue, that by itself would not attract the penalty u/s 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 AO for any reason, the assessee will invite penalty u/s 271(1)(c). That is clearly not the intendment of the Legislature."*

*12. The decision of Hon'ble Supreme Court has been followed by all High Courts and I.T.A.T. including by I.T.A.T., Indore in the case of DCIT vs Bhopal Vikas Pradhikaran, Bhopal (ITANO.44 & 45/Ind/2011)*

*13. Respectfully following the aforesaid decision of Hon'ble Supreme Court, it has to be concluded that mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return*

*cannot amount to furnishing inaccurate particulars. In the instant case, all the material was available in the return of income filed before the AO for assessment of the total income. The AO has not discovered or unearthed any new fact not disclosed in the return/final amounts. The AO has only disallowed certain expenses and claim of provisions made in the profit & loss amount simply by looking at the profit & loss account. The AO has not made disallowance on the basis of any discovery of any concealed fact. As per law laid down by the Hon'ble Supreme Court such disallowance do not attract penalty u/s 271(1)(c). Thus, there was neither any concealment of income nor furnishing of inaccurate particulars of income. Therefore, following the Hon'ble Apex Court decision discussed in the above paras, it is concluded that the penalty provisions are not attracted in this case. The concealment penalty imposed cannot be sustained in law and on facts and the same deserves to be deleted. Accordingly, the penalty imposed is deleted.*

13. As regard the judgment referred and relied by the Ld. DR, we find that these are not applicable on the facts of the assessee and the judgment of Hon'ble Supreme Court of India in the case of CIT vs. Reliance Petro Products Pvt. Ltd.(supra) is squarely applicable on the assessee.

14. We, therefore, in the given facts and circumstances of the case, are of the considered view that the alleged additions made by the Ld. AO cannot be termed either as concealment of income or furnishing of inaccurate particulars of income and therefore, levying of penalty on the additions made for disallowance of *bona fide* claim made by the assessee cannot stand for and thus rightly held to be unjustified by Ld. CIT(A). Therefore, no interference is called for in the finding of Ld. CIT(A) and the same stands confirmed.

15. In the result, both the appeals of revenue in case of Sewa Sahakari Samiti (ITANo.857/Ind/2018) & Krashak Sewa Sahakari Samiti (ITANo.858/Ind/2018) stands dismissed.

*Order was pronounced in the open court on 22.11.2019.*

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 22/11/2019

*Patel. P. S./नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Assistant Registrar**