

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4906/MUM/2018
Assessment Year: 2012-13**

Satpati Machhimar Vividh
Karyakari Sahkari Society Ltd.,
Satpati Machhimar Bldg, B/H
Govt. Hospital, Satpati Palghar,
Dist: Thane.

PAN No. AAABS1082L
Appellant

Vs. Assistant Commissioner of
Income Tax, Palghar Circle,
Palghar BIDCO Road, Dist.
Palghar-401404.

Respondent

Assessee by : None
Revenue by : Mr. V. Vinod Kumar, DR

Date of Hearing : 18/02/2020
Date of pronouncement : 24/02/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-3, Thane [in short 'CIT(A)'] and arises out of the penalty levied u/s 271(1)(c) of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 04.12.2019 and 18.02.2020, neither the assessee nor its authorized representative appeared before the Tribunal on the above dates. As there is non-compliance by the assessee, we are proceeding to dispose off this appeal after examining the materials

available on record and after hearing the Ld. Departmental Representative (DR).

2. The grounds of appeal filed by the assessee read as under :

- 1) The Assessing Officer had made an error in levy of penalty u/s 271(1)(c) r.w.s 274 of Income Tax Act 1961 without specifically mentioning under which limb of the section the penalty is being levied whether for concealment of income or for furnishing inaccurate particular of income.
- 2) The Ld. CIT (Appeal) while confirming the penalty order ignored the submission of the appellant to keep the penal proceedings in abeyance till the quantification order being passed and provide opportunity of hearing after the quantification order being passed.
- 3) The Penalty Order passed by the FAA was against the principle of natural justice.
- 4) The order appeal against is bad in Law and against the principle of natural justices and tax jurisprudence.
- 5) The order appeal against is based on surmises and conjectures.

3. Briefly stated, the facts of the case are that the assessee, a Co-op. Society, filed its return of income for the assessment year (AY) 2012-13 on 27.09.2012 declaring total income at Rs. Nil. During the course of assessment proceedings, the Assessing Officer (AO), on perusal of the annual report of the assessee, observed that it had shown income from Telecom Tower at Rs.5,97,200/-. Further observing that the same is not allowable as a deduction as per provisions of section 80P, the AO made an addition of Rs.5,97,200/-.

Subsequently, the AO initiated penalty proceedings u/s 271(1)(c) on the reason that the assessee had claimed deduction u/s 80P on income from

Telecom Tower, which was not allowable. Therefore, the AO levied a minimum penalty of Rs.1,99,047/- u/s 271(1)(c) of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) *vide* order dated 14.05.2018 held the penalty imposed by the AO as confirmed, but ruled that it would be imposed on the net income from house property, after allowing deduction u/s 24(a) of the Act.

5. Before us, the Ld. DR supports the order passed by the Ld. CIT(A).

6. We have heard the Ld. DR and perused the relevant materials on record. In the instant case, the assessee-society had claimed income of Rs.5,97,200/- from Telecom Tower and claimed as deduction u/s 80P of the Act. However, the AO added Rs.5,97,200/- as income from other sources and levied a penalty of Rs.1,99,047/- u/s 271(1)(c) of the Act. In *CIT v. Reliance Petroproducts (P.) Ltd.* [2010] 189 Taxman 322 (SC), it is held by the Hon'ble Supreme Court that "a mere making of claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding income of assessee". Thus merely because the assessee had claimed deduction u/s 80P in the instant case, which claim 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.

The ratio laid down in the above decision of the Hon'ble Supreme Court squarely applies to the facts of the case. Respectfully following it, we set aside the order of the Ld. CIT(A) and delete the penalty of Rs.1,99,047/- levied by the AO.

7. In the result, the appeal is allowed.

Order pronounced in the open Court on 24/02/2020.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 24/02/2020

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai