

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1493/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2011-12

The Asst. Commissioner of Income Tax,  
Jalna Circle, Jalna

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Parbhani District Central  
Co-Operative Bank Ltd.,  
Pandit Jawaharlal Nehru Road,  
Distt.-Parbhani-431401

PAN : AAAAT6996R

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak  
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 12-10-2020

घोषणा की तारीख / Date of Pronouncement : 14-10-2020

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the Revenue against the order dated 22-03-2017 passed by the Commissioner of Income Tax (Appeals)-1, Aurangabad ['CIT(A)'] for assessment year 2011-12 wherein he deleted the penalty imposed by the AO u/s. 271(1)(c) of the Act.

2. The Revenue raised ground Nos. 1 and 2 amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in deleting the penalty imposed by the AO u/s. 271(1)(c) of the Act in the facts and circumstances of the case.

3. The brief facts relating to the issue on hand are that the assessee is a Co-operative Bank engaged in the business of banking. The assessee filed its return of income declaring a total income of Rs.10,20,25,523/-. The AO determined the same at Rs.19,44,96,980/- inter alia making additions on account of :

- i. One time settlement recovery at Rs.25,01,247/-;
- ii. Interest rebate @ 25% at Rs.30,00,673/-;
- iii. Interest received on statutory reserve fund at Rs.21,39,000/-;
- iv. Various heads at Rs.8,45,79,904/- and
- v. Disallowance u/s. 40(a)(ia) at Rs.2,50,632/-.

4. The CIT(A) in quantum proceedings, amongst the above additions made by the AO confirmed (i) interest on statutory reserve fund, (ii) under various heads to an extent of Rs.23,11,000/- & Rs.1,87,62,904/- and (iii) addition u/s. 40(a)(ia) at Rs.2,50,632/-.

5. The AO initiated penalty proceedings for furnishing inaccurate particulars of income and concealment of income and imposed penalty of Rs.72,50,233/- on the additions confirmed in quantum proceedings at minimum rate @ 100%. The CIT(A) cancelled the penalty by holding that

the assessee claimed various deductions under bonafide belief and the said deductions were technical and debatable.

6. Heard both parties and perused the material available on record. The contention of Id. DR, Shri S.P. Walimbe is that the AO basically recorded that the assessee furnished inaccurate particulars of income/concealment of income and imposed penalty proceedings on the additions confirmed in the quantum proceedings. He submitted that the assessee claimed various deductions in the assessment proceedings without having any evidence in support of such claims and vehemently argued that the CIT(A) without considering the same cancelled the penalty.

7. The Id. AR, Shri Nikhil Pathak submits that the assessee claimed interest of Rs.21,39,000/- as deduction under the bonafide belief that this amount was not taxable as it received from another Co-operative Society. Regarding an amount of Rs.23,11,000/- the assessee under the impression that it is an allowable deduction. In respect of leave encashment provision, the assessee by placing reliance on the decision of Hon'ble High Court of Calcutta in the case of Exide Industries Ltd. Vs. UOI reported in 292 ITR 470 and further for non-deduction of TDS on rent paid in terms of decision of Special Bench in the case of Merilyn Shipping & Transports Vs. ACIT. He argued that all the details regarding the deductions claimed were shown in the computation of total income and also in the books of account. His contention is that all the details were furnished in the assessment proceedings in support of claimed deductions on bonafide belief that all

the claims were legally allowable, which does not constitute filing inaccurate particulars of income and concealment of income and supported the order of CIT(A).

8. We note that, admittedly that all the details regarding deductions were before the AO in the assessment proceedings. On perusal of the assessment proceedings it is clear from paras 3.1 to 3.5 the AO discussed the issue therein in detail and proposed additions, thereby, in our opinion, does not amount to constitution of a charge to levy penalty u/s. 271(1)(c) of the Act. The CIT(A) discussed the deductions which were confirmed in quantum proceedings in detail from para 5 of impugned order and we find that all the details of claims before the AO as rightly pointed by the ld. AR, in respect of interest received on statutory reserve fund, the assessee claimed the said interest is not taxable under the bonafide belief and therefore, did not offer the same for taxation.

9. Regarding an amount of Rs.23,11,000/- the assessee considering the same as an allowable deduction under the bonafide belief that is also a part of provision for bad and doubtful debts u/s. 36(1)(viiia) of the Act. Other provision of Rs.1,87,62,904/- is a provision made for leave encashment wherein we note that the assessee claimed the said provision as deduction in terms of decision of Hon'ble High Court of Calcutta in the case of Exide Industries Ltd. (supra) wherein it was held that leave encashment is neither a statutory liability nor it is a contingent liability.

10. Regarding rent paid of Rs.2,50,632/- the disallowance was made for not deducting TDS. We note that on perusal of record that the assessee claimed this deduction under the impression that non-applicability of TDS provisions on the amount of expenditure paid at the end of the year in terms of decision of Special Bench in the case of Merilyn Shipping & Transports (supra).

11. We find the assessee clearly explained the reasons and bonafide belief in which the said deductions were claimed and mere disallowance of claim in the assessment proceedings could not be the sole basis for levying penalty u/s. 271(1)(c) of the Act. In our opinion making a claim which is rejected by the authorities would not amount the assessee liable to prosecution u/s. 271(1)(c) of the Act. We note that the assessee furnished all the details of its income and explained the legal basis for deduction claimed in its return of income and computation of income. The details of additions made in the assessment proceedings and partially confirmed in the appellate proceedings are fully disclosed in the statement of accounts filed by the assessee which are part and parcel of return of income. Therefore, in our opinion there was no furnishing of inaccurate particulars of income nor concealment of income by the assessee.

12. The Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroproducts Pvt. Ltd. reported in 322 ITR 158 held that a mere making of claim which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars of income nor concealment of income.

Thus, we find no infirmity in the order passed by the CIT(A) and we uphold the same. Thus, the grounds raised by the Revenue are dismissed.

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

Order pronounced in the open court on 14<sup>th</sup> October, 2020.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 14<sup>th</sup> October, 2020.  
RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Aurangabad
4. The Pr. CIT-1, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune