

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” Bench, Mumbai**

**Before Shri S. Rifaur Rahman, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No.6339/Mum/2019  
(Assessment Years: 2011-12)**

M/s Shimpoli Laxmi Krupa CHS  
Ltd.,A/201, Shimpoli Laxmi  
Krupa, Chikoo Wadi, Shimpoli,  
Borivali West,  
Mumbai – 400 092.

ITO, 32(3)(4), Room No. 115, aykar  
Bhavan, M.K Road,  
Mumbai – 400 020.  
Vs.

PAN – AADAS3812J

**(Appellant)**

**(Respondent)**

Appellant by: Written Submissions  
Respondent by: Shri. Vijay Kumar Menon, D.R

Date of Hearing: 31.03.2021  
Date of Pronouncement: 06.04.2021

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-44, Mumbai, dated 26.07.2019, which in turn arises from the order passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act') dated 23.06.2017 for A.Y. 2014-15. The assessee has assailed the impugned order on the following effective grounds of appeal before us:

- “1. On facts, in circumstances of the case and in law, the learned CIT-A erred in dismissing the appeal by rejecting the request for condonation of delay in filing the appeal.
2. On facts, in circumstances of the case and in law, the learned CIT-A erred in not considering the fact that the Hon. CIT(A) directed the A.O to allow deduction U/S 80(P) resulting into deletion of addition U/S 143(3) as per Appeal order.”

2. Briefly stated, the assessee which is a cooperative society had filed its return of income declaring Nil income. Subsequently, the case of the assessee society was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. Observing, that as per the AIR information the assessee had received interest income of Rs. 1,15,434/- from M/s Saraswat Co-operative Bank Ltd., the A.O called upon it to explain as to why the same may not be added to its income. In reply, it was submitted by the assessee that the aforesaid interest income was entitled for deduction under Sec. 80P of the Act. However, the A.O drawing support from the judgment of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT (2006) 157 Taxman 1 (SC) concluded that no such fresh claim of the assessee could be entertained except for in a case where the same was raised by filing a revised return of income. Backed by his aforesaid conviction the A.O assessed the income of the assessee society at Rs. 1,15,440/-. The A.O while culminating the assessment also initiated penalty proceedings under sec. 271(1)(c) of the Act.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A). In the mean time, the A.O vide his 'Show cause' notice (for short "SCN"), dated 19.06.2017 called upon the assessee to explain as to why penalty under Sec. 271(1)(c) may not be imposed on it. In reply, the assessee requested that no penalty under Sec. 271(1)(c) was called for in its hands. Alternatively, it was submitted by the assessee that as its appeal against the quantum assessment was pending before the CIT(A), therefore, the impugned penalty proceedings be kept in abeyance till the disposal of the said appeal. However, the A.O not finding favour with the contentions of the assessee, vide his order dated 23.06.2017 imposed penalty under Sec. 271(1)(c) of Rs. 33,000/-.

5. Aggrieved, the assessee assailed the penalty imposed by the A.O u/s 271(1)(c) before the CIT(A). As the appeal filed by the assessee involved a delay, therefore, it had filed an application seeking condonation of the same.

6. In the mean time, the quantum appeal of the assessee against the order passed by the A.O under Sec. 143(3), dated 02.12.2016 was allowed by the CIT(A), vide his order dated 21.06.2018, and the assessee was held eligible for deduction u/s 80P(2)(d) of the interest income received from M/s Saraswat Co-operative Bank Ltd.

7. As the appeal filed by the assessee against the penalty imposed by the A.O under Sec. 271(1)(c) involved a delay of 31 days, the assessee, had thus filed an application seeking condonation of the said delay, which, however, was wrongly claimed to be of 14 days (as against the actual delay of 31 days). During the course of the appellate proceedings the assessee filed an affidavit/declaration of Shri. Sanjay D.Salvi, Chairman of the assessee society, wherein the latter duly deposed the reasons leading to the delay in filing of the appeal. It was stated on behalf of the assessee society that as the quantum assessment was challenged before the CIT(A), it had, thus, remained under a bonafide belief that as the penalty order passed by the A.O under Sec. 271(1)(c) would therein get merged, therefore, no separate appeal would be required to be filed. It was submitted by the assessee that their misconception was dispelled only when they had visited their chartered accountant, viz. Shri. Jagdish H. Gujrathi on 20.08.2017, who informed them that they were required to have filed an appeal with the CIT(A) against the penalty order passed by the A.O under Sec. 271(1)(c). It was submitted by the assessee that on learning about the lapse on their part they deposited the appeal fees on 22.08.2017, and the said challan alongwith the original copy of the penalty order and demand notice was sent to the chartered accountant. As the appeal that was required to be electronically filed had to be digitally signed, therefore, after the needful was done, the appeal was filed on 03.09.2017, which therein involved a delay of 31 days (initially wrongly taken by the assessee as 14 days i.e calculated from the date of deposit of appeal fees on 22.08.2017). In order to support the aforesaid facts the assessee alongwith the affidavit of Shri. Sanjay D. Savi, Chairman had also placed on record the affidavit/declaration of its chartered accountant, viz. Shri.Jagdish H. Gujrathi.

However, the CIT(A) did not find favour with the explanation of the assessee as regards the reasons leading to the delay in filing of the appeal and refused to condone the delay, as a result whereof the appeal was dismissed in limine.

8. We have given a thoughtful consideration to the issue in hand i.e the reasons leading to the delay in filing of the appeal and are unable to persuade ourselves to subscribe to the declining on the part of the CIT(A) to condone the same in exercise of the powers vested with him under sub-section (3) of Sec. 249 of the Act. Admittedly, the appeal filed by the assessee society before the CIT(A) involved a delay of 31 days. On a perusal of the records, we find that the assessee society had candidly admitted that the delay in filing of the appeal had arisen because of their bonafide belief that as the quantum assessment was challenged before the CIT(A), thus, the penalty order passed by the A.O under Sec. 271(1)(c) would therein get merged and no separate appeal was required to be filed. Fact that the assessee had filed its appeal against the quantum assessment order passed by the A.O under Sec. 143(3), dated 02.12.2016 with the CIT(A) well within the prescribed time therein clearly rules out any lackadaisical approach on its part in dealing with its income-tax matters. Rather, there could also be no malafide reason on the part of the assessee in adopting any delaying tactics in filing of the appeal against the order passed by the A.O under Sec. 271(1)(c) of the Act. Insofar the observation of the CIT(A) that there is no plausible reason to explain the delay involved in filing of the appeal after its chartered accountant had on 20.08.2017 made it aware of the requirement to file the said appeal, we find that the same can also safely be gathered from the record. As deposed by Shri. Sanjay D. Salvi, Chairman of the assessee society, after learning about the requirement of filing a separate appeal against the penalty order passed by the A.O under Sec. 271(1)(c) the assessee had deposited the requisite appeal fees on 22.08.2017. However, as the appeal was to be electronically filed and digital signatures of the assessee were required, therefore, some time would have been exhausted in doing the needful on the part of the assessee as well as its chartered accountant. In the backdrop of the aforesaid

facts, we are unable to persuade ourselves to subscribe to the declining on the part of the CIT(A) to condone the delay involved in filing of the present appeal. Apart from that, as the assessee's claim for deduction under Sec. 80P(2)(d) of the interest income received by it from M/s Saraswat Co-operative Bank Ltd. had been allowed by the CIT(A), vide his order dated 21.06.2018 thus, the very addition as regards which the impugned penalty under Sec. 271(1)(c) was imposed on the assessee does no more survive. Accordingly, de hors the existence of the addition/disallowance leading to imposition of penalty under Sec. 271(1)(c), the latter even otherwise cannot survive on a standalone basis and has to meet the same fate. We, thus, in terms of our aforesaid observations set aside the order of the CIT(A) and vacate the penalty of Rs. 33,000/- imposed on the assessee society by the A.O under Sec. 271(1)(c) of the Act.

11. Resultantly, the appeal of the assessee is allowed.

Order pronounced in the open court on 06.04.2021

Sd/-  
S. Rifaur Rahman  
(ACCOUNTANT MEMBER)

Sd/-  
Ravish Sood  
(JUDICIAL MEMBER)

Mumbai, Date: 06.04.2021  
PS: Rohit

**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "E" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar  
ITAT, Mumbai