IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE SH. RAVISH SOOD, JUDICIAL MEMBER
AND
DR. M. L. MEENA, ACCOUNTANT MEMBER

I.T.A. No. 280/ASR/2018
(Assessment Year: 2011-12)

The Hoshiarpur Central Coop Bank Ltd, Railway Road, Hoshiarpur PAN: AAAAT0384K	Vs.	Dy. CIT, Circle, Hoshiapur
(Appellant)		(Respondent)

Assessee by :	Shri J. S. Bhasin, Adv
Revenue by:	Shri Rohit Mehra, DR
Date of Hearing	20/12/2021
Date of pronouncement	24/12/2021

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-1, Jalandhar dated 27.03.2017, which in turn arises from the order passed by the A.O. u/s 271(1)(c) of the Income Tax Act, 1961 (for short "the Act"), dated 23.03.2016 for Assessment Year 2011-12. The assessee has assailed the impugned order on the following grounds before us:

"1. That in the facts and circumstances of the case, the Id.CIT(A) misdirected herself to confirm the levy of penalty under section 271(l)(c) on wholly erroneous and insufficient grounds.

2. That contrary to facts on record, the Id.CIT(A) grossly erred to hold that the assessee did not declare true particulars of income and no bonafide explanation could be filed.

3. That the additions made in assessment, being revenue neutral, besides being debatable in nature, the levy of impugned penalty was wholly unwarranted in law and on facts.

4. That the order under appeal is wholly against the law and facts of the case and hence not sustainable."

2. Briefly stated, the assessee which is a cooperative bank had e-filed its return of income for Assessment Year 2011-12 on 30.09.2011, declaring a total income of

Rs. 3,35,61,574/-. Original assessment was framed by the AO vide his order passed u/s 143(3) of the Act, dated 28.03.2014 and the income of the assessee was assessed at Rs. 7,45,20,750/- after making the following additions/ disallowances:-

i.	Additions of interest subvention on accrual basis	Rs. 1,03,00,000/-
ii.	Disallowance of premium paid for leave encashment	Rs. 45,92,000/-
iii.	Additions on account of Dividend distribution tax not deposited	Rs. 35,67,180/-
iv.	Additions on account of disallowance of provision made against standard loan	Rs. 2,25,00,000/-
	Total	Rs. 4,09,59,180/-

On appeal, ld CIT(A) vide his order dated 09.09.2014 confirmed the additions amounting to Rs. 1,48,92,000/- as under:-

1.	Addition of interest subvention on accrual basis	Rs. 1,03,00,000/-
2.	Disallowance of premium paid for leave encashment	Rs.45,92,000/-
	Total	1,48,92,000/-

3. After receipt of the order passed by the ld CIT(A) in the quantum appeal, the AO vide his order passed u/s 271(1)(c) dated 23/03/2016 imposed a penalty of Rs. 6,27,758/- on the assessee for furnishing of inaccurate particulars of its income.

4. Aggrieved, the assessee assailed the penalty imposed on him before the CIT(A). However, the CIT(A) finding no infirmity in the view taken by the AO upheld the penalty imposed by him u/s 271(1)(c) of the Act.

5. The assessee being aggrieved with the order of the ld CIT(A) has carried the matter before us.

6. At the very outset of the hearing of the appeal, it was submitted by the ld Authorised Representative (for short 'ld A.R') for the assessee, that insofar the disallowance of the premium paid for leave encashment of Rs. 45.92 lac was concerned, the Tribunal while disposing off the quantum appeal of the assessee had vide its order dated 16/07/2018 restored the said issue to the file of the AO. It was submitted by the ld AR that the AO had thereafter vide his order passed u/s 143(3) dated 22/08/2019 after carrying out necessary verifications u/s 133(6) from LIC,

Hoshairpur and considering the reply filed by the assessee allowed the assessee's claim qua the payment of Rs. 45.92 lacs. Backed by the aforesaid fact, it was submitted by the ld AR that the solitary issue as regards the penalty imposed by the AO u/s 271(1)(c) was confined to the addition of interest subvention on accrual basis of Rs. 1.03 crores (approx). Adverting to the facts pertaining to the addition of interest subvention on accrual basis, it was submitted by the ld AR, that the assessee by way of a consistent practice had been offering the said amount as its income as and when the same was approved by the disbursing authority i.e. NABARD. It was submitted by the Ld. AR, that on the basis of its aforesaid practice of accounting, the assessee had during the year under consideration credited an interest subvention of Rs. 128.60 lacs pertaining to the 2nd half of F.Y. 2009-10 i.e. on its accrual during the current financial year along with interest subvention for the 1st half of the year under consideration itself. It was submitted by the ld AR, that on a similar footing the interest subvention claimed for 2nd half for the year under consideration amounting to Rs. 1.03 crores (supra) was offered by the assessee as its income in the immediately succeeding year i.e. F.Y. 2011-12 i.e. on its approval by the disbursing authority. It was submitted by the ld AR that the aforesaid method of recognising interest subvention subsidy on its approval was consistently followed by the assessee from year to year and had duly been accepted by the AO. In the backdrop of the aforesaid facts, it was submitted by the ld AR that though the aforesaid methodology of accounting for the interest subvention of Rs. 1.03 crores was not approved by the ld CIT(A) who had upheld the addition made by the AO, however, in order to avoid the taxing of the aforesaid income twice he had directed the AO to provide appropriate relief to the assessee in the next financial year where the said income had been offered to tax. On the basis of the aforesaid facts, it was submitted by the ld AR that as the assessee on the basis of its consistent practice had offered an amount of Rs. 1.03 crores (supra) for tax in the immediately succeeding year, therefore, it could by no means be held that it had any malafide intention of avoiding any tax qua the said amount. On the basis of his aforesaid contention, it was submitted by the ld AR that though the assessee had not assailed the order of the ld CIT(A) qua the addition of Rs. 1.03 crores (supra) that was sustained by him, however, considering the totality of the facts of the case no penalty u/s 271(1)(c) could have validly been imposed as regards the said amount.

7. Per Contra, the ld Departmental Representative (for short "the ld DR") relied on the orders of the lower authorities.

8. We have heard the ld Authorised Representative for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective claims. In so far the disallowance of premium paid for leave encashment of Rs. 45.92 lacs is concerned, we concur with the claim of the ld AR that as the said addition had been vacated by the AO vide his order passed u/s 143(3) of the Act on 22.08.2019, therefore, no penalty qua the said amount could be sustained. We, thus, in the backdrop of the aforesaid facts direct the AO to vacate the penalty imposed by him u/s 271(1)(c) of the Act to the extent the same is relatable to the aforesaid disallowance of Rs. 45.92 lac (supra). Adverting to the penalty imposed by the AO as regards the addition of interest subvention on accrual basis of Rs. 1.03 crore (supra), we find that it is a matter of fact borne from the record that the assessee by way of a consistent practice had been recognising the said income as and when its claim was approved by the disbursing authority. On a perusal of the orders of the lower authorities, we find that the aforesaid claim of the assessee was rejected by them, primarily, for the reason that as the assessee was following mercantile system of accounting, therefore, the aforesaid interest subvention was liable to be accounted for on an accrual basis. It was observed by the lower authorities, that as the claim would fall due in favour of the assessee as per the policy framed by an organisation or the government, it was, therefore, incorrect to say that the said claim would become due only when it was approved by that organization. Be that as it may, it is a matter of fact that the aforesaid interest subvention of Rs. 1.03 crores (supra) as per the consistent method of recognising its income was offered by the assessee for tax in the immediate succeeding year. On the basis of its aforesaid consistent practice of recognising interest subvention subsidy, we find that the assessee had during the year under consideration recognised interest subvention of Rs 128.60 lacs for F.Y. 2009-10 that was approved and received during the year under consideration, while for the interest subvention of Rs. 1.03 crore (supra) for FY 2010-11 that was approved and received during the immediately succeeding year was accounted for by the assessee in the said later year. On the basis of the aforesaid facts, we find substance in the claim of the ld AR that though the aforesaid method of accounting

for recognising interest subvention subsidy not finding favour with the lower authorities could have justified an addition in the hands of the assessee, however, the same could not have been stretched to an extent for imposing penalty on the it u/s 271(1)(c) of the Act. In sum and substance, though the AO may not have accepted the method of accounting of the interest subvention by the assessee, however, the same on such standalone basis, in our considered view, could have by no means justified levy of penalty u/s 271(1)(c) of the Act. Our aforesaid conviction is fortified by the judgment of Hon'ble Supreme Court in the case of the Reliance Petroproducts Ltd Vs. CIT 322 ITR 158 (SC), wherein, it had been observed that a mere rejection of the claim of the assessee would not on such standalone basis justify imposition of penalty u/s 271(1)(c) of the Act. In the backdrop of our aforesaid deliberations, we are of a strong conviction that the aforesaid addition of Rs. 1.03 crores (supra) made by the ld AO qua the interest subvention on accrual basis i.e. by discarding the practice of accounting followed by the assessee could not have on such standalone basis justified saddling the assessee with penalty u/s 271(1)(c) of the Act. We, thus, not being able to persuade ourselves to subscribe to the view taken by the lower authorities, therein, set aside the order of the ld CIT(A) and vacate the penalty of Rs. 6,27,758/- imposed by the AO u/s 271(1)(c) of the Act. The **Grounds of appeal Nos. 1 to 3** are allowed in terms of our aforesaid observations.

9. **Ground No. 4** of the appeal being general is dismissed as not pressed.

10. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 24/12/2021.

Sd/-	Sd/-
(Dr. M. L. MEENA) Accountant Member	(RAVISH SOOD) Judicial Member

Dated: 24/12/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)

5. DR:ITAT

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BY ORDER