

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.919/PUN/2023

निर्धारण वर्ष / Assessment Year: 2008-09

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| DCIT, Satara Circle, Satara | Vs. | The Karad Janata Sahakari Bank Ltd., 100/101, Karad Janata, Veeta Road, Karad, Near Shivaji Cloth Market, Karad, Satara – 415110 PAN : AAAAT7863R |
| Appellant | | Respondent |

Assessee by : Smt. Deepa Khare
Revenue by : Shri Ramnath P. Murkunde

Date of hearing : 18.04.2024
Date of pronouncement : 24.04.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the Revenue is directed against the order dated 27.06.2023 passed by Id. CIT(A), (NFAC) for the assessment year 2008-09.

2. The appellant revenue has raised the following grounds of appeal:-

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing to delete the penalty levied by the AO and concluding that the case is not fit for imposition of penalty either under the main part of section 271(1)(c) or under the deeming provisions of Explanation 1 to section 271(1)(c) of the Act.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that by claiming excess deduction, the assessee has tried to avail an undue advantage which makes this a clear case of ‘intentional wrongdoing’, thereby justifying the penalty imposed by the AO.

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in placing reliance on Hon’ble Supreme Court’s judgment in the case of CIT v. Reliance Petroproducts (P) Ltd. [(2010) 322 ITR 158 (SC)], when the facts of the present case are clearly distinguishable.

4. The appellant craves leave to add, amend or alter any of the above ground of appeals.”

3. Facts of the case, in brief, are that the AO during the course of assessment proceedings u/s 143(3) allowed the claim for deduction u/s 36(1)(viia) only to the extent of provision actually created of Rs.65,00,000/- as against total claim of deduction of Rs.2,73,09,306/- and the balance of Rs.2,08,09,306/- was disallowed as no provision was created in the books of account. In appeal, the CIT(A), NFAC sustained the disallowance made by the

AO. On further appeal before the Tribunal, the disallowance was confirmed following its earlier year's decision in assessee's own case.

4. Subsequently, on the basis of above disallowance the Assessing Officer levied penalty of Rs.62,39,793/- u/s 271(1)(c) of the Act vide order dated 01.09.2016 holding that the respondent-assessee is guilty of furnishing of inaccurate particulars of income.

5. In appeal, the ld. CIT(A), NFAC deleted the penalty levied u/s. 271(1)(c) of the Act by holding that the mere disallowance of claim for deduction does not entail levy of penalty u/s 271(1)(c) by placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd., 322 ITR 158 (SC). The relevant observation of the ld. CIT(A), NFAC reads as under :

"I find that in the case of the appellant on similar issues in A Yr 2009-10, the LD CIT(A) has deleted the penalty imposed u/s 271(1) C of the IT Act as the AO failed to prove that this is a fit case for imposition of penalty either under the main part of section 271(1) C of the Act or under the deeming provisions of Explanation 1 to section 271(1) C of the Act . Considering the above discussion and respectfully following judicial pronouncements and the decisions of the LD CIT(A) in A Yr 2009-10 , the penalty of Rs 62,39,793/- levied by the AO is deleted."

6. Being aggrieved by the above decision of the Id. CIT(A), the Revenue is in appeal before the Tribunal.

7. The Id. CIT-DR while heavily relying on the order of AO contended that the assessee claimed an excess deduction u/s 36(1)(viiia) of the Act in the return of income which establishes the fact of furnishing inaccurate particulars of income and the Id. CIT(A) ought not to have deleted the penalty.

8. The Id. AR, Smt. Deepa Khare on the other hand brought to our notice that the issue of penalty u/s 271(1)(c) of the Act involved in the present appeal is squarely covered by order dated 18-01-2022 in ITA No. 2600/PUN/2017 of the Co-ordinate Bench passed in assessee's own case for assessment year 2009-10 wherein, penalty imposed by the AO u/s 271(1)(c) of the Act on similar facts was deleted by the CIT(A) and the appeal filed by the Revenue against the order of CIT(A) was dismissed. In the light of above decision of Co-ordinate Bench in assessee's own case the Id. AR requested to dismiss the appeal of the revenue.

9. We have heard learned counsels from both the sides & perused the material available on record . We find that during the

year under consideration i.e. in assessment year 2008-09 under section 143(3) proceedings the AO disallowed excess expenditure of Rs 2,08,09,305/- claimed u/s 36(i)(viiia) of the IT Act for which provision was not made in the books of account . The disallowance of expenditure was confirmed by CIT(A) as well as by this Tribunal . On the basis of this disallowance the then AO proceeded to impose penalty of Rs.62,39,793/- u/s 271(1)(c) of the IT Act. In first appeal relying on the judgement of Hon'ble Apex Court in the case of CIT vs Reliance Petro products pvt Ltd- 322 ITR 158 SC, the CIT (A) deleted the penalty imposed u/s 271(1)(c) of the I.T. Act.

10. We find in assessee's own case for Asstt. year 2009-10 similar penalty u/s 271(1)(c) was deleted by the CIT (A) & the same order was confirmed by Co-ordinate Bench of this Tribunal in ITA No. 2600/PUN/2017 by observing as under :

“9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the levy of penalty u/s 271(1)(c) of the Act. The Assessing Officer disallowed the excess claim of deduction u/s 36(1)(viiia) on the ground that the assessee had not created the requisite provision and levied penalty u/s 271(1)(c) by holding that the respondent-assessee is guilty of furnishing of inaccurate particulars of income. On perusal of the assessment order, it will clearly suggest that, it is a case of mere disallowance of excess claim for want of creation of requisite provision which, in our considered opinion, does not tantamount to furnishing inaccurate particulars of income, nor can it be said that it is false claim. Therefore, the ratio of decision of the Hon'ble Apex Court in the case of Reliance Petro Products Pvt. Ltd. (supra) is squarely applicable to the

facts of the present case. Further, on mere perusal of the assessment order as well as the penalty order, we do not find any finding of the Assessing Officer as to how in what manner the assessee had furnished inaccurate particulars of income leading to the subject addition to the returned income. In the absence of this finding, the order of penalty cannot be sustained in the eyes of law as held by the following catena of decisions :-

- i) CIT Vs. Balbir Singh (2008) 304 ITR 125.*
- ii) National Textiles Vs. CIT (2001) 249 ITR 124.*
- iii) Nainu Mal Het Chand Vs. CIT (2007) 294 ITR 185.*
- iv) CIT Vs. Super Metal Re-Rollers Pvt. Ltd. (2004) 265 ITR 82.*
- v) Diwas Enterprise Vs. CIT (2000) 246 ITR 571 Delhi.*
- vi) CIT Vs. Shivnarayan Jamnalal & Co., (1998) 232 ITR 311.*
- vii) CIT Vs. T. Abdul Majeed (1998) 232 ITR 50.*

10. Therefore, we do not find any fallacy and illegality in the order of the ld. CIT(A) deleting the penalty of Rs.59,00,884/- u/s 271(1)(c) of the Act. Thus, the issue raised in the grounds of appeal stands dismissed.”

11. Since the facts of the instant case are identical to the facts of the case already decided by the Tribunal in assessee's own case for A.Y. 2009-10, therefore, we find no infirmity in the order passed by the ld. CIT(A) in deleting the penalty of Rs.62,39,793/- u/s 271(1)(c) of the Act . The ld. DR also could not brought anything new in support of the case of the Revenue. Therefore, respectfully following the decision passed by the Co-ordinate Bench of this Tribunal in ITA No 2600/PUN/2017 order dated 18-01-2022 in assessee's own case, we uphold the order passed by the CIT(A) & dismiss the appeal filed by the revenue. Thus, the issue raised by the revenue in the grounds of appeal is dismissed.

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

Order pronounced in the Open Court on 24th April, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24th April, 2024.

Ravi

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

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

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.