

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.241/Nag./2018

(Assessment Year : 2013-14)

Asstt. Commissioner of Income Tax
Chandrapur Circle, Chandrapur

..... Appellant

v/s

Chandrapur District Central
Co-operative Bank, Nagpur Road
Civil Lines, Chandrapur 442 401
PAN - AAAJC0023F

..... Respondent

ITA no.399/Nag./2019

(Assessment Year : 2015-16)

Asstt. Commissioner of Income Tax
Chandrapur Circle, Chandrapur

..... Appellant

v/s

Chandrapur District Central
Co-operative Bank, Nagpur Road
Civil Lines, Chandrapur 442 401
PAN - AAAJC0023F

..... Respondent

ITA no.89/Nag./2022

(Assessment Year : 2018-19)

Dy. Commissioner of Income Tax
Amravati & Chandrapur Circle, Amravati

..... Appellant

v/s

Chandrapur District Central
Co-operative Bank, Nagpur Road
Civil Lines, Chandrapur 442 401
PAN - AAAJC0023F

..... Respondent

Assessee by : Shri Mahavir Atal
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing - 12/08/2024

Date of Order - 21/08/2024

ORDER

PER V. DURGA RAO, J.M.

All the aforesaid appeals have been filed by the Revenue. Appeal for the assessment year 2013-14, is against the impugned order dated 06/07/2018, appeal for the assessment year 2015-16 is against the impugned order dated 12/09/2019, passed by the learned CIT(A)-2, Nagpur, and appeal for the assessment year 2018-19 is against the impugned order dated 21/03/2022, passed by the National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*].

2. Since all these appeals relate to the same respondent assessee, therefore, these appeals were clubbed together and are being disposed of by way of this common order for the sake of convenience.

ITA no.241/Nag./2018 **Revenue's Appeal – A.Y. 2013-14**

3. In its appeal, the assessee has raised following grounds:-

"1) Whether on the facts and circumstances of t the case, and in law, the CIT(A) erred in deleting the penalty levied u/s 271(1)(c) without appreciating the fact that the assessee had deliberately claimed excess deduction under the head "Bad and Doubtful Debts" without routing through P&L Account which was not allowable under the I.T. Act, 1961?

2) Whether on the facts and circumstances of the case and in law, the CIT(A) was correct in holding that the excess deduction claimed by the assessee was not on account of wilful deliberate default but a "mistake" committed by the assessee which did not result in furnishing of inaccurate particulars so as to attract the penal provisions of the Act despite the assessee resorting to such claims from A.Y 2010-11, which are regularly disallowed by the AO and the same being upheld by the Ld. CIT(A)?

3) Whether on the facts and circumstances of case the CIT(A) erred in not following the judgment of Hon'ble Delhi High Court in Zoom Communications Pvt. Ltd.(327 ITR 510), relied upon by AO wherein decision of Reliance Petro Products (P) Ltd. Was considered?

4) *Any other ground that may be raised at the time of hearing.*"

4. In this case, the assessee is a District Central Co-operative Bank and is engaged in banking activity and has the license for carrying on the business of banking from Reserve Bank of India. For the year under consideration, the assessee filed its return of income for the assessment year 2013-14, declaring total loss of ₹ 28,47,56,893, claiming refund of ₹ 2,10,47,680, after claiming deduction under section 36(1)(viia) of the Income Tax Act, 1961 (*"the Act"*) amounting to ₹ 46,57,11,248. Subsequently, the assessee filed revised return of income on 30/10/2014, declaring total loss of ₹ 28,47,56,893, and claimed refund of ₹ 2,10,47,680, after claiming deduction under section 36(1)(viia) of the Act amounting to ₹ 46,57,11,248. The case was selected for scrutiny. By following due process, the assessment was completed under section 143(3) of the Act dated 26/02/2016, assessing total income of ₹ 23,51,05,202. Subsequently, penalty proceedings were initiated under section 271(1)(c) of the Act. In the penalty order, the Assessing Officer noticed that the assessee has claimed deduction under section 36(1)(viia) of the Act of ₹ 46,57,11,248, not eligible for deduction for the reason that the assessee has debited an amount of ₹ 7.50 lakh towards provisions for bad and doubtful debt in its books. Accordingly, in the assessment order, the Assessing Officer held that the assessee has made a wrongful deduction under section 36(1)(viia) of the Act amounting to ₹ 46,57,11,248, as against the excess claim in the return of income amounting to ₹ 39,07,11,248. Therefore, the Assessing Officer has initiated penalty proceedings under section 271(1)(c) of the Act and issued notice dated 26/02/2016, under

section 274 r/w section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

5. The assessee has submitted before the Assessing Officer during the penalty proceedings that the assessee made a bona fide claim and it does not tantamount to furnishing of inaccurate particulars of income and also placed reliance on the judgment of the Hon'ble Supreme Court in CIT v/s Reliance Petroproducts Pvt. Ltd. [2010] 322 ITR 158 (SC). However, the Assessing Officer has not accepted the explanation of the assessee and he noted as under:-

"18. The facts of the case and the provisions of the Act discussed above clearly say that the assessee is not eligible to claim deduction in excess of the amount of provision for bad and doubtful debts created in its books of Rs.7,50,00,000/-. Besides, the very fact that the assessee has admitted, in the statement of facts filed with the grounds of appeal before the CIT(A) for AY 2011-12 and 2012-13, that the deduction u/s 36(1)(viiia) should be allowed as per section 36(2)(v) clearly show that the assessee was very well aware that it is not eligible to claim such deduction in excess of the amount of provision for bad and doubtful debts created in its books. From the above facts, it is evident that despite the specific provision in the L.T. Act, the assessee has made a wrong claim of deduction u/s 36(1)(viiia) amounting to Rs.39,07,11,248/- which is in excess of its eligibility i.e. in excess of the amount of provision for bad doubtful debts provided in its books and, has thus furnished inaccurate particulars of its income. In view of the above and considering the fact that the assessee is not permitted to claim deduction in excess of the provision created in its books in terms of section 36(2)(v), the claim made by the assessee u/s 36(1)(viiia) in the Return of Income in respect of provision for bad and doubtful debts is deliberate and intentional without any regard to the provisions of Law. Hence, there is no doubt that the deduction claimed in the Return in excess of the provision created in its books is an intentional and deliberate attempt to not to pay the taxes due as per Law particularly when the assessee was well aware that that it is not eligible to claim such deduction. The assessee has not furnished any justifiable reason for claiming such wrong deduction in its Return. It is also noted that the assessee has not offered any satisfactory explanation, for claiming such deduction in the Return for which it not eligible, in response to the penalty show cause notice issued and has merely cited flimsy ground like mistake of accountant which is in fact found to be not bona fide. The facts of the case clearly say that first, the assessee has violated the provisions of L.T. Act by making a false claim and thereafter, furnished a false explanation during the penalty proceedings which is proved to be not bona fide. The explanation offered by the assessee is no defense considering the fact that the assessee was very well aware that the deduction

claimed is unsustainable in law as it had admitted in its appeal filed before the CIT(A) in its earlier years and still in clear defiance of the law, it went ahead of claiming such deduction in the Return is definitely a conscious breach of law together with an attitude of disregard to the express provisions of the I.T. Act by the assessee in as much as its wrong and excess deduction u/s 36(1)(viiia) r.w.s. 36(1)(v) is concerned. Hence, it is not a case of mere wrong claim but a claim which is inadmissible in law where no two views are possible. Therefore in this case, although mensrea is not required to be proved in 271(1)(c) penalty in view of the judicial decision in the case of Dharmendra Textiles (306 ITR 277) being a civil liability, still from the facts on record it appears that it is proved beyond doubt the intention of the assessee as it has failed to explain on what basis it has claimed a wrong deduction knowing it fully well way before its filing of Return that it is not eligible for the same. The above action of the assessee tantamount to furnishing of inaccurate particulars of income and, therefore, the assessee has failed to prove that it has rendered a bona fide explanation. Since the assessee has acted against the express provisions of the law and made deliberate claims knowing fully well that the claim is unsustainable in law, it has attracted penal provisions. In view of the above, the provisions of section 271(1)(c) are applicable to the facts of this case as the assessee in its Return has made a wrongful claim of deduction in respect of provision for bad and doubtful debts which amounts furnishing of inaccurate particulars of income. The assessee is therefore, liable for penalty u/s 271(1)(c) for furnishing of inaccurate particulars of income to the tune of Rs. 39,07,11,248/- by making a wrong claim of deduction u/s 36(1)(viiia).

19. In view of the above, I am satisfied that the assessee has furnished inaccurate particulars of its income to the tune of Rs. 39,07,11,248/- (i.e. Rs. 465711248- Rs. 7,50,00,000/-) and as such has committed default within the meaning of section 271(1)(c) of the I.T. Act. Thus, it is a fit case for levy of penalty u/s 271(1)(c) of the I.T. Act."

6. In view of the above, the Assessing Officer levied penalty under section 271(1)(c) of the Act of ₹ 39,07,11,248, for furnishing inaccurate particulars of income. The assessee being aggrieved filed appeal before the first appellate authority.

7. The learned CIT(A) deleted the penalty levied by the Assessing Officer.

The observations of the learned CIT(A) are as follows:–

"Decision:

6.0 I have considered the submission made by the counsel of appellant and perused the evidence on record. The brief facts in case of appellant are that it is carrying on banking business as co-operative bank in the district of Chandrapur. The appellant has given rural advances through various branches

and is eligible for benefit of deduction u/s 36(1)(viiia) of I.T. Act 1961. The A.O. in the assessment framed has allowed deduction u/s 36(1) (viiia) of I.T. Act 1961 to the extent of Rs.7.50 crores in respect to provision made in books of account. The A.O. has not accepted deduction u/s 36(1) (viiia) of I.T. Act 1961 at Rs.46.57 crores in respect to claim made in return. A.O. in the order imposing penalty has reproduced the working of allowable deduction u/s 36(1)(viiia) at para 10.1 of order imposing penalty u/s 271(1)(c) of I.T. Act 1961. The calculation submitted by the appellant has not been disputed or faulted in the assessment proceedings and so also in penalty proceedings. The A.O. has however restricted the deduction claimed u/s 36(1)(viiia) at Rs.7.50 crores even though the allowable claim at the hands of appellant is computed at Rs.46.57 crores for the reason that the appellant has not provided in books of account the entire sum of Rs.46.57 crores but has provided Rs.7.50 crores only. It is for this reason alone the deduction claimed has been restricted to Rs.7.50 crores. It is in respect to this disallowance of Rs.39.07 crores, the A.O. has proceeded to levy penalty u/s 271(1)(c) of Income Tax Act 1961.

6.1 It is observed that the information in respect of the claim of deduction and provision for the same are already contained in the books of account and was apparent from the return and documents annexed thereto. No part of the figures submitted by appellant has been found to be incorrect. I agree with the appellant's argument that the quantum of allowable deduction in terms of provisions of section 36(1)(viiia) of I.T. Act 1961 at 46.57 crores is also not disputed, but the disallowance came to be made only on account of non-provisions of the same in the books of account. It is thus evident that the claim made by the appellant in the return of income is bona fide and in no manner of consideration can be said to be mala fide so as to invite penalty u/s 271(1)(c) of I.T. Act 1961.

6.2 The appellant has relied on several judicial decisions to argue its case and these were perused. It is observed that the Hon'ble ITAT Bangalore Bench, Bangalore in case of Syndicate Bank Vs. DCIT reported at 78 ITD 103 has concluded that the deduction u/s 36(1) (viiia) of I.T. Act 1961 is allowable without making any provisions for bad and doubtful debt in the books of account. The relevant para of decision is reproduced hereunder for reference.

"20. The learned CIT has also acted under the misconception that deduction under cl. (viiia) is related to the actual amount of provision made by the assessee for bad and doubtful debts. The true meaning of the clause, as indicated earlier, is that once a provision for bad and doubtful debts is made by a scheduled bank having rural branches, the assessee is entitled to a deduction which is quantified not with respect to the amount provided for in the accounts, but with respect to a certain percentage of the total income and also a certain percentage of the aggregate average advances made by the rural branches of the bank. In other words, this is a specific deduction given by the statute irrespective of the quantum provided by the assessee in its accounts towards provision for bad and doubtful debts."

6.3 The Hon'ble ITAT Delhi Bench, Delhi in case of ACIT Vs Prathama Bank in ITA No.4090/De/2013 vide judgment dated 14/07/2017 has concluded that the deduction u/s 36(1)(viiia) of I.T. Act 1961 is allowable irrespective of provisions for bad and doubtful debt being made in the books of account. The relevant para of decisions is reproduced hereunder for reference.

"16. The Id. CIT(A) after considering the submissions deleted the addition by observing as under.

"I have carefully perused the assessment order and gone through the detailed submissions of the counsel for the appellant and also the various judicial pronouncements cited by the counsel for the appellant. The main issue involved in appeal before me is the claim of deduction made by the assessee u/s 36(1)(viiia) of the I.T. Act which has been restricted by the A.O. to the extent of the provision for bad and doubtful debts made in the books of accounts ignoring the claim of the assessee @ 10% of average monthly rural advances which is based on clear interpretation of the language used in section 36(1)(viiia). It is seen that provision for bad and doubtful debt has been shown at Rs. 5,45,49,000/ Other provisions of Rs. 23,07,86,000/ have also been claimed. The appellant revised the return and claimed deduction u/s 36(1)(viiia) of the Act at Rs. 1,05,69,80,000/ which is 10% of the aggregate rural advances of the bank. It is seen that the claim of the appellant finds support from the decision of Hon'ble Supreme Court of India, in the case of Southern Technologies Ld Vs JCIT reported n (2010) 228 ITR (SC) 440. In this case, the Apex Court had occasion to analyze the provisions of section 36(1)(viiia) and held that-

"Analysis of Section 36(1)(viiia)

"Section 36(1)(vii) provides for a deduction in the computation of taxable profits for the debt established to be a bad debt. Section 36(1)(viiia) provides for a deduction in respect of any provision for bad and doubtful debt made by a Scheduled Bank or Non Scheduled Bank in relation to advances made by its rural branches, of a sum not exceeding a specified percentage of the aggregate average advances by such branches. Having regard to the increasing social commitment, Section 36(1)(viiia) has been amended to provide that in respect of provision for bad and doubtful debt made by a scheduled bank or a nonscheduled bank, an amount not exceeding a specified per cent of the total income or a specified per cent of the aggregate average advances made by rural branches, whichever is higher, shall be allowed as deduction in computing the taxable profits."

17. The Id. CIT(A) held that the assessee was entitled to claim deduction u/s 36(1)(viiia) of the Act at 10% in view of the decision of the Hon ble Apex Court and other various judicial pronouncement cited by the assessee.

"23. In the present case, the AO himself admitted in the assessment order at page no. 3 that the assessee had claimed deduction u/s 36(1)(viiia) of the Act at Rs. 105,69,80,000/- which is 10% of the aggregate rural advances of the bank. The aforesaid claim was allowable to the assessee as per the ratio laid down by the Hon ble Supreme court in the aforesaid referred to cases of Southern Technologies Ltd. Vs JCIT 320 ITR 577 and Catholic Syrian Bank Ltd. Vs CIT

343 ITR 270. The impugned order passed by the Id. CIT(A) is in consonance with the observations made by the ITAT F Bench, New Delhi having same combination in assessee s own case for the assessment year 2009-10 i.e. Prathma Bank Vs CIT (2016) 52 ITR (Trib.) 454 (Del.) (supra). We, therefore, considering the totality of the facts as discussed hereinabove, do not see any valid ground to interfere with the findings given by the Id. CIT(A). Accordingly, we do not see any merit in this appeal of the department."

6.4 It is also observed that Hon'ble ITAT in case of M/s. Prathma Bank for Asstt. Year 2009-10 reported at 52 ITR 0454 (Del.) has set aside the order of Commissioner of Income Tax passed u/s 263 of I.T. Act and allowed the

deduction u/s 36(1)(viiia) of I.T. Act 1961. The relevant para of decision is reproduced hereunder for reference.

"18. In the present case, the assessee had given the break-up of each branch (copies of which are placed at pages 15 to 28). In the instant case, the assessee in its computation of revised total income/loss (copy) of which is placed at page 1 of the assessee's paper book) clearly mentioned that deduction under section 36(1)(viiia) of the Act was claimed at 10 per cent of average agricultural advances of Rs.801.56 crores. Thereafter, the Assessing Officer after examining the aforesaid details came to the conclusion that the claim of the assessee was allowable and he accordingly allowed the claim of the assessee under section 36(1) (viiia) of the Act. The said claim was in accordance with law and as provided in the provisions of section 36(1)(viiia) of the Act."

The ratio laid down by the aforesaid decision squarely support the submission of appellant and considering the same, the levy of penalty u/s 271(1)(c) of I.T. Act 1961 is unjustified and unsustainable.

"6.5 The aforesaid three decisions clearly indicate that the legal position as to requirement of making provisions in books of account for the allowable deduction u/s 36(1)(viiia) of I.T. Act 1961 is not mandatory. It is thus clear that requirement of making provision is debatable matter considering the above stated judicial precedents. It is a settled proposition of law that in respect to debatable addition made in the assessment framed no penalty u/s 271(1)(c) of I.T. Act 1961 is exigible. The aforesaid proposition is in terms of decision of Hon'ble Delhi High Court in case of M/s. Liquid Investment & Trading Co. Ltd. in ITA No.240 of 2009 vide judgement dated 05/10/2010. The relevant para of decision is reproduced hereunder for reference.

"Both the CIT(A) as well as the ITAT have set aside the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 on the ground that the issue of deduction under Section 14A of the Act was a debatable issue. We may also note that against the quantum assessment whereunder deduction under Section 14A of the Act was prescribed to the assessee, the assessee has preferred an appeal in this Court under Section 260A of the Act which has also been admitted and substantial question of law framed. This itself shows that the issue is debatable. For these reasons, we are of the opinion that no question of law arises in the present case."

The ratio laid down by the aforesaid decision squarely applies to the facts in case of appellant and considering the same, the levy of penalty u/s 271(1)(c) of I.T. Act 1961 is unjustified and unsustainable.

6.6 The Hon'ble Bombay High Court in case of Advaita Estate Development Pvt. Ltd. reported at 98 CCH 0097 (Mum.) has held that in case of debatable addition made in assessment, no penalty is exigible u/s 271(1)(c) of I.T. Act 1961. The relevant head note of decision is reproduced hereunder for reference.

"Penalty u/s 271(1)(c) - Deletion of penalty - Tribunal deleted penalty imposed u/s 271(1)(c) on assessee - Held, when appeal had been admitted in quantum proceedings by High Court, then that itself was evidence of issue being debatable, not warranting any penalty - Imposition of penalty was not justified as admission of appeal in quantum proceeding on his issue as substantial question of law was proof enough of issue being debatable - Revenue's Appeal dismissed."

The ratio laid down by the aforesaid decision squarely applies to the facts in case of appellant that in respect to debatable claim no penalty u/s 271(1)(c) is

6.7 It is also seen that Hon'ble Bombay High Court in case of M/s. Aditya Birla Power Co. Ltd. in ITA No.9851 of 2014 vide order dated 02/12/2015 has held that where an issue is debatable/arguable, no occasion to impose penalty u/s 271(1)(c) of I.T. Act 1961 can arise. The relevant para of decision is reproduced hereunder for reference.

"6. The decision of the Tribunal in Nayan Builders & Developers (supra) deleting penalty, was a subject matter of Revenue's appeal being Income Tax Appeal No.415 of 2012. This Court by an order dated 8th July, 2014 dismissed the Revenue's appeal, inter alia, holding that where an issue is debatable/arguable, no occasion to impose penalty can arise and the fact that the appeal in quantum proceedings had been admitted, was evidence enough of the issue being debatable.

7. Accordingly, following the decision of the Tribunal in Nayan Builders & Developers (supra), no question of law arises for our consideration."

The ratio laid down by the aforesaid decision squarely applies to the facts in case of appellant and considering the same, the levy of penalty u/s 271(1)(c) of I.T. Act 1961 is unjustified and unsustainable.

6.8 The appellant has given detailed explanation on the judgment of Hon'ble Delhi High Court and ITAT Mumbai relied upon by the A.O. in the order imposing penalty. On perusal of the two judgments, it is seen that these judgments are distinguishable on facts, and the ratio laid down in the said judgments is inapplicable to the facts in the case of appellant, as facts in the present case are materially different from the facts in the cases relied upon by the A.O. This has been examined in detail in the written submission of appellant reproduced and highlighted hereinabove. In view of this, there is nothing adverse which can be drawn from the judgments referred to and relied upon by the A.O. in the penalty order.

6.9 The Hon'ble Gujarat High Court in case of Principal CIT Vs. Kutch District Central Co-operative Bank Ltd. in ITA No.919 of 2017 vide its judgment dated 06/12/2017 has held that no penalty is exigible in respect to addition made in the assessment framed u/s 36(1)(viiia) of I.T. Act 1961 on account of non-provisions of the same in books of account. The relevant observations from the decision are reproduced herein under for reference.

"Whether the Hon'ble ITAT has erred in law in deleting the penalty levied by the Assessing Officer under section 274 read with section Income Tax Act?" 271(1)(c) of the Act?

2. The assessment year is 2009-10. The assessee, a cooperative bank, claimed deduction of Rs. 77,92,437/- at the rate of 10% being statutory allowance for bad and doubtful debts under section 36(1)(viiia) of the Act. The said 10% amount arose from aggregate average of advances made by the assessee's rural branches. The Assessing Officer framed a regular assessment on 24.11.2011 disallowing such deduction on the ground that the assessee had not made a provision for bad and doubtful debts under the scheme of statutory allowances. He thereafter initiated penalty proceedings alleging furnishing of inaccurate particulars. In the assessee's appeal, the Commissioner (Appeals),

by his order dated 11.2.2014, confirmed the quantum disallowance, against which the assessee does not appear to have filed any further appeal and, accordingly, the quantum proceedings have attained finality.

3. In the penalty proceedings, the assessee pleaded that it had not filed any inaccurate particulars since the disallowance arose from rejection of statutory claim wherein the relevant facts were already part of the record. Placing heavy reliance on the quantum developments, the Assessing Officer treated the disallowance as a case of furnishing of inaccurate particulars of income and by an order dated 12.11.2014 imposed penalty of Rs.25,00,000/-.

4. The assessee carried the matter in appeal before the Commissioner (Appeals), who set aside the order passed by the Assessing Officer and deleted the penalty. The revenue carried the matter in appeal before the Tribunal, but did not succeed.

5. Mrs. Mauna Bhatt, learned senior standing counsel for the appellant, assailed the impugned order by placing reliance upon the reasoning adopted by the Assessing Officer in the order passed under section 271(1)(c) of the Act.

6. A perusal of the record of the case reveals that before the Commissioner (Appeals), it was contended on behalf of the assessee it had not furnished any inaccurate particulars of income. All the particulars were fully and correctly disclosed in the assessment proceedings and in fact, the disallowance made by the Assessing Officer was based on particulars furnished by the assessee which fact was clearly evident from the assessment order and that this was not a case where the Assessing Officer had discovered any material particulars. It was submitted that this was a case where the assessee had claimed a deduction based on its own understanding of the relevant provisions of the statute, which was not found to be statutorily available by the income tax authorities and hence, was disallowed. Therefore, this was just a case of unsustainable claim in law and not of inaccurate particulars. The Commissioner (Appeals), while setting aside the penalty observed that the fact that no provision was made in the accounts and the deduction was directly claimed in the computation of income was declared by the assessee, which was also self-evident from the audited annual accounts and computation of income of the assessee. He further observed that it was a fact that the disallowance made by the Assessing Officer and confirmed by the Commissioner (Appeals) was based on the particulars disclosed by the assessee, and therefore, it could not be said that any particulars were concealed or were misrepresented before the Assessing Officer. The Commissioner (Appeals) held that the assessee had made a claim as per its understanding of the law by disclosing all relevant particulars thereof and such claim was finally found to be legally unsustainable. Therefore, the penalty could not be levied on the charge of furnishing inaccurate particulars in view of the decision of the Supreme Court in the case of *Reliance Petroproducts Pvt. Ltd.*, 322 ITR 158 (SC).

7. The Tribunal, in the impugned order, has recorded that there is no discussion in the penalty order that the assessee has not placed on record all necessary facts for raising its claim for deduction of bad and doubtful debts at the rate of 10% of the average advances made by the assessee's rural branches and that the same in fact formed the very basis of the Assessing Officer to make the disallowance without conducting any inquiry about facts any more. In this backdrop, the Tribunal has concluded that the disallowance cannot be held as an instance of furnishing inaccurate particulars of income.

8. Thus, from the facts as emerging on record, it is evident that the assessee, after furnishing all necessary particulars, had made a claim for deduction under section 36(1)(vii) of the Act in relation to bad and doubtful debts at the rate

of 10% of the average advances made by the assessee's rural branches. The Assessing Officer did not allow the claim and such disallowance was confirmed by the Commissioner (Appeals). In Commissioner of Income-tax v. Reliance Petroproducts (P) Ltd. (supra) the Supreme Court held thus:

20. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the assessing officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the legislature.

9. Thus, the Supreme Court has held that merely making of a claim which was not accepted or not acceptable to the Revenue would not tantamount to furnishing of inaccurate particulars so as to attract the provisions of section 271(1) (c) of the Act. In the facts of the present case, the entire penalty order is based upon the facts as placed by the assessee on the record. Thus, merely because the assessee had made a claim which came to be disallowed, the provisions of section 271(1) (c) of the Act would not be attracted. Under the circumstances, the Tribunal was wholly justified in holding that there was nothing to indicate that the assessee had furnished inaccurate particulars of income warranting imposition of penalty under section 271(1)(c) of the Act.

10. In the light of the above discussion, it cannot be said that the impugned order passed by the Tribunal suffers from any legal infirmity so as to give rise to any question of law, much less, a substantial question of law, warranting interference. The appeal, therefore, fails and is, accordingly, summarily dismissed."

The ratio laid down by the aforesaid decision squarely supports the submission of appellant and considering the same, the levy of penalty u/s 271(1)(c) of IT. Act 1961 is unjustified and unsustainable.

6.10 The Hon'ble ITAT Mumbai Bench Mumbai in the case of Vasai Vikas Sahkari Bank Ltd. in ITA No.2869/Mum/2015, vide judgement dated 27/03/2017 has concluded that no penalty u/s 271(1)(c) of I.T. Act 1961 is exigible in respect to disallowance of deduction u/s 36(1)(viiia) for the reason that no provisions have been made in the books of account. The relevant para of decision is reproduced herein under for reference.

4. We have heard the rival contention of both the parties. We find that the assessee has merely failed to provide the provision in bad debt and doubtful debt though the provision is made as per RBI guidelines in the earlier year was in excess. The assessee has directly claimed the deduction in computation of income instead of providing same in the books for debiting in the P & L account as per the provisions of the Act. Therefore, the assessee had neither concealed nor filed any inaccurate particulars of income. The assessee has duly disclosed the facts of income in its return of income filed before the department. Therefore, we are of the view that the issue in controversy is covered by the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P.) Ltd. [2010] 322 ITR 158 (SC) Petroproduct (supra) wherein it is held that a mere making claim which is not sustainable in law will not

amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in return cannot amount to inaccurate particular and no penalty u/s. 271(1)(c) can be imposed."

The ratio laid down by aforesaid decision squarely support the submission of appellant and considering the same, the levy of penalty u/s 271(1) (c) of I.T. Act 1961 is unjustified and unsustainable.

6.11 It is also seen that Hon'ble ITAT in Mumbai Bench in case of Thane District Central Co-operative Bank in ITA No.5038/Mum/2015 vide judgement dated 15/11/2017 has held that no penalty u/s 271(1)(c) of I.T. Act 1961 is exigible in respect to disallowance of deduction u/s 36(1)(viiia) of I.T. Act 1961 for the reason that short provision in respect to bad and doubtful debt have been made in books of accounts. The relevant para of decision is reproduced hereunder for reference.

"5. In view of the order passed by the ITAT in the assessee's own case in ITA No.3043/Mum/2015, we are of the view that the penalty is not leviable. Moreover, it is not a case of furnishing the inaccurate particulars of income and concealment of particulars of income because we also noticed that the case of the assessee is in connection with the raising of the claim in view of the provision u/s 36(1) (viiia) of the Act which has been declined therefore, no penalty is leviable in view of the law settled in CIT Vs. Reliance Petro Product 322 ITR 158 in view of the above discussion it is quite clear that the no penalty is liable therefore, we set aside the finding of the CIT(A) on this issue and delete the penalty."

The ratio laid down by aforesaid decision squarely support the submission of appellant, and considering the same, the levy of penalty u/s 271(1)(c) of I.T. Act 1961 is unjustified and unsustainable.

7.12 The Hon'ble Apex Court in case of M/s Reliance Petro Products Pvt. Ltd. reported at 322 ITR 158 (SC) while considering the provisions of section 271(1)(c) of I.T. Act 1961 has held as under:

"9.A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.

10. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under s. 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by AO for any reason, the assessee will invite penalty under s. 271(1)(c). That is clearly not the intendment of the legislature.

11. In this behalf the observations of this Court made in Sree Krishna Electricals vs. State of Tamil Nadu & Anr. (2009) 23 VST 249 (SC) as regards the penalty are opposite. In the aforementioned decision which pertained to the penalty proceedings in Tamil Nadu General Sales-tax Act, the Court had found that the authorities below had found that there were some incorrect statements made in the return. However, the said transactions were reflected in the accounts of the assessee. This Court, therefore, observed:

"So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's account books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities include these items in the dealer's turnover disallowing the exemption, penalty cannot imposed. The penalty levied stands set aside."

The situation in the present case is still better as no fault has been found with the particulars submitted by the assessee in its return."

The ratio laid down by the Hon'ble Apex Court squarely applies to the facts in case of appellant. In the facts of present case, the entire penalty is based upon the facts placed by assessee on record and claim was in respect to transaction recorded in books of account. In view of above penalty levied in case of appellant is unjustified and unsustainable.

6.13 It is also important to bear in mind that the appellant is a co-operative bank whose share capital is held by several individuals and no group of individuals have major shareholding or controlling interest in the functioning of the appellant bank. In such circumstances, it is difficult to believe that there could have been any motive or intention on the part of the appellant to conceal its assessable income and this aspect further strengthens the case of the appellant that the above mistake is a bonafide mistake. As stated earlier, the complete facts with regard to the claim of deduction were apparent on the face of record and no additional material or enquiry was required to be made by the A.O. to make the said disallowance. The disallowance has been made by the A.O. on the basis of facts disclosed by the appellant in its return of income and hence the said mistake is a bonafide mistake and cannot be defined as concealment or finishing of inaccurate particulars of Income.

6.14 Considering the totality of facts and circumstances in the present case, I am of the considered view that penalty levied at Rs. 12.50 crores in the case of appellant is unjustified. The various submission as made and recorded hereinabove also support the case of appellant that it is not the fit case to levy of penalty u/s 271(1)(c) of I.T. Act 1961. The penalty levied u/s 271(1)(c) of I.T. Act 1961 at Rs. 12.5 cores is hereby cancelled. The grounds of appeal are allowed."

The Revenue, being aggrieved by the aforesaid order passed by the learned CIT(A) deleting the penalty levied by the Assessing Officer under section 271(1)(c) of the Act, is in appeal before the Tribunal.

8. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. We find that the claim made by the assessee is in accordance with the provisions of section 36(1)(viiia) of the Act and the allowability of claim is not in dispute before the

Assessing Officer. The Assessing Officer rather restricted the claim to ₹ 7.50 crore in view of the fact that in the Profit & Loss A/c, provision of bad and doubtful debt has been made to the tune of ₹ 7.50 crore. The fact and information provided in the return of income has not been found to be incorrect or false by the Assessing Officer, however, the disallowance on account of bad and doubtful debt was made and resultant penalty was levied. We further find that the learned CIT(A) has perfectly relied upon various judicial pronouncements which are reproduced above in the order passed by the learned CIT(A). In our view, the judgment of the Hon'ble Supreme Court in Reliance Petroproducts Pvt. Ltd. (supra) which is also relied upon by the learned CIT(A) is squarely covered in favour of the assessee and against the Revenue wherein it has been held that merely making incorrect claim does not tantamount to furnishing inaccurate particulars. Respectfully following the aforesaid judgment of the Hon'ble Supreme Court we uphold the order of the learned CIT(A) and dismiss the grounds raised by the Revenue.

9. In the result, appeal by the Revenue's is dismissed.

ITA no.399/Naq./2019
Revenue's Appeal – A.Y. 2015-16

10. The Revenue has raised following grounds:-

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(Appeals) is right in deleting the addition of Rs.1,86,04,925/- made u/s 36(1)(viii) without going to the merits of the case.

2. Whether on the facts and circumstances of the case, the Ld. CIT(Appeal) is right in concluding that, the action of the AO in allowing only 20% of Income amounting being received from agricultural advances long term finance are eligible for benefit of deduction u/s 36(1)(viii) of the Act is not correct.

3. Whether on the facts and circumstances of the case, the Ld. CIT (A) is right in ignoring the detailed working done by the AO to arrive at the correct deduction u/s 36(1)(viii) which clearly stipulates that the profit from the business of long term finance will alone be eligible for the deduction.

4. Whether on the facts and circumstances of the case, the Ld. CIT(A) is right in agreeing with the submission of the assessee that the working of the Ld. A.O. as assessment order to be revised by taking 2.786% of total expenses claimed in P & L account as reduced by interest paid without any specific findings.

5. Whether on the facts and circumstances of the case, whether the Ld. CIT(A) is right in accepting assessee's submission that the said investment is made out of share capital or reserve and surplus without the assessee submitting any evidence to the prove and co-relate that such investment is from share capital or reserve.

6. Whether on the facts and circumstances of the case, the Ld. CIT(Appeal) is right in deleting the addition of Rs 2,39,000/- u/s 14A of the Act read with rule 8D of the I.T. Rules without appreciating the fact that the provisions of section 14A with regard to dividend income were upheld by the Hon'ble Apex court in the case of Maxopp Investment Ltd. Vs. CIT.

7. Any other ground that may be raise during the proceedings.”

11. As already discussed above, the assessee in the present case is a Co-operative Bank and filed its return of income for the year under consideration on 29/09/2015, disclosing total income at ₹ 7,45,57,340. The assessee's case was selected for scrutiny and the Assessing Officer concluded the assessment under section 143(3) of the Act on 20/12/2017, assessing total income at ₹ 10,72,30,120 after making addition on account of disallowance of deduction under section 36(1)(vii) of the Act and allowed deduction of ₹ 5,32,982, as against claim made by the assessee at ₹ 1,91,41,031. The assessee being aggrieved by the disallowance of ₹ 1,86,04,975 on account of deduction under section 36(1)(vii) of the Act, filed appeal before the first appellate authority.

12. The learned CIT(A) partly allowed the assessee's claim by observing as under:—

"5.2 Ground No.2 to 4: In these grounds, the appellant has challenged the addition of Rs.1,86,04,975 on account of disallowance of deduction claimed u/s 36(1)(viii) of the Act.

5.2.1 Due consideration has been given to the related discussion made in the impugned Assessment Order. The submission of the Ld Counsel of the appellant (reproduced fully in para 4 above). It is found that the submission made on behalf of the appellant has force in it and the action of Ld AO in concluding that only 20% of income amounting to Rs.5,32,982 having being received from agricultural advance on long term finance being eligible for benefit of deduction u/s. 36(1) (viii) of the Act is not correct and cannot be sustained in facts of the case and in law.

5.2.2 In the light of the above discussion, the impugned addition of Rs. 1,86,04,975 is directed to be deleted as the appellant is entitled to get relief on this account i.e. regarding the impugned addition in form of disallowance of claimed deduction u/s 36(1)(viii) of the Act related to 20% of the interest received on agricultural advance for more than five years (completing all the conditions that were required for allowing the deduction and) as it is not found to be sustainable in facts of the case and in law.

5.2.3 However, in the written reply in sub para B), C) & D) of para 3 of the undated reply and submitted on the last date of hearing i.e 09-09-2019, the Ld Counsel has lastly concluded [in sub para D)] that the working of the Ld AO as made in para 5.1.3 & para 5.1.4 of the impugned Assessment Order needs to be revised by taking 2.786 % of total expenses claimed in Profit & Loss A/c as reduced by interest paid for the reasons given in the written submission (B, C of para 3 also reproduced fully in para No.4 above) This working thus makes that deduction u/s. 36(1)(viii) in the case of the appellant is allowable to Rs.62,82,265 as against Rs.5,36,050 allowed by the Ld AO in the impugned Assessment order and against the original claim in the Return of the appellant to the extent of Rs.1,91,41,031. However, since it is a matter of verification, the Ld AO is directed to do so while giving effect to this appeal order and issue a fresh Demand Notice. Ground No.2 to 4, therefore, are partly allowed."

The Revenue being aggrieved by the order so passed by the learned CIT(A), is in appeal before the Tribunal.

13. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. With regard to grounds no.1 to 4, it is evident from Para-5.2.3 of the learned CIT(A)'s order that the learned CIT(A) has not given any definite conclusion and held that since it is a matter of verification, the Assessing Officer was directed to do so

while giving effect to the appeal order and issue afresh demand notice. Under section 251 of the Act, deal with the power of the learned CIT(A), it is clear that the learned CIT(A) does not have power to set aside the assessment w.e.f. 01/06/2001, the order of the learned CIT(A) is unsustainable in the eyes of law and thus we restore the matter to the file of the learned CIT(A) to decide the matter afresh. Thus, grounds no.1 to 4 are allowed for statistical purposes.

14. In ground no.5, the learned CIT(A) in Para-5.3.3, has relied upon the judgment of the Hon'ble Jurisdictional High Court. However, the findings of the learned CIT(A) are very cryptic and he has not care to examine the financial parameters. The matter is set aside to the learned CIT(A) for frehs adjudication. Ground no.5, is allowed for statistical purposes.

15. In the result, appeal filed by the Revenue is allowed for statistical purposes.

ITA no.89/Nag./2022
Revenue's Appeal – A.Y. 2018-19

16. The learned CIT(A) allowed the assessee's claim and the Assessing Officer was directed to verify the additional claim made by the assessee and accordingly the order may be passed in accordance with law.

17. During the course of hearing, the learned Authorised Representative submitted that in accordance with the provisions of section 251(2) of the Act, the Revenue has no power to set aside the issue to the file of the Assessing Officer and the Bench agreed with the submissions of the learned A.R.

Accordingly, we hold that the issue has to be restored to the file of the learned CIT(A) for denonvo adjudication on merit. We order accordingly and direct the learned CIT(A) to pass order in accordance with law.

18. In the result, appeal filed by the Revenue is allowed for statistical purposes.

19. To sum up, ITA no.241/Nag./2018, is dismissed; ITA no.399/Nag./2019 is allowed for statistical purposes; and ITA no.89/Nag./2022, is allowed for statistical purposes.

Order pronounced in the open Court on 21/08/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 21/08/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur