

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI SANJAY GARG, JM
AND
SHRI DR. MANISH BORAD, AM**

**ITA No. 709/Kol/2024
(Assessment Year: 2013-14)**

The E&NF Railway Co- operative Bank Ltd. 34A & B, Sashi Bhusan Dey Street, Kolkata-700 012	Vs.	The Asst. Commissioner of Income Tax, Circle-37, 3, Govt. Place (West), Room No.13, 2nd Floor, Kolkata-700 001, West Bengal
(Appellant)		(Respondent)
PAN No. AAAAE3431A		

Assessee by : Shri N.C. Mondal, AR
Revenue by : Shri Bonnine Debbarma, DR

Date of hearing: 12.08.2024
Date of pronouncement: 27.08.2024

ORDER

PER DR. MANISH BORAD, AM:

This appeal at the instance of the assessee is directed against the order of Commissioner of Income-tax (Appeals) [learned CIT (A)] dated 13.02.2024, which is arising out of the assessment order under Section 143(3) of the Income-tax Act, 1961 (the Act) dated 13th January, 2016. The penalty was levied by ACIT Circle-37, Kolkata under section 271(1)(c) of the Act vide order dated 26th July, 2016.

02. The only issue for our consideration is that whether the learned CIT (A) erred in confirming the action of the learned

Assessing Officer levying the penalty under Section 271(1)(c) of the Act at ₹44,00,917/-.

03. We have heard the rival contentions and perused the records placed before us and carefully gone through the orders of the learned lower authorities referred and relied by both the sides.
04. We observe that the assessee is a co-operative bank and its activities regulated by Reserve Bank of India. Income of ₹1,75,86,307/- declared in the return for A.Y. 2013-14 furnished on 28th September, 2013. During the course of assessment proceedings carried out after being selected for scrutiny through Computer Assisted Scrutiny Selection (CASS), the learned Assessing Officer observed that assessee had made excess claim towards provision for bad and doubtful debts at ₹1,35,68,450/- and excess claim of contingent provision on standard asset at ₹6,74,000/-. It was claimed before the learned Assessing Officer that these calculations are being done by the person, who prepares the return and it is an inadvertent mistake. However, the learned Assessing Officer was not satisfied and he made the addition and initiated the penalty proceedings under Section 271(1)(c) of the Act and finally levied the penalty of ₹44,00,917/- for furnishing inaccurate particulars of income.
05. Before us the learned counsel for the assessee referring various decisions including that of Hon'ble Apex Court in the case of *CIT v. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158 (SC)* and that of the co-ordinate Bench, Pune in the

case of *Kanbay Software vs. DCIT [2009] 31 SOT 153 (Pune)* dated 28-04-2009 and also of the jurisdictional High Court in the case of *CIT vs. Shahabad Co-Op. Sugar Mills Ltd. [2010] 322ITR73 (Punjab & Haryana)*, claimed that the ratio laid down in the said decisions are applicable on the facts of the case of the assessee and the alleged penalty has been wrongly levied for inaccurate computation of income by the assessee but there being no case of furnishing inaccurate particulars of income.

06. On the other hand, the learned Departmental Representative has supported the orders of the learned lower authorities.
07. We have heard the rival contentions and perused the records placed before us and carefully gone through the decisions relied on by the assessee. The impugned penalty has been levied under Section 271(1)(c) of the Act for the alleged furnishing of inaccurate particular of income. We note that the excess claim of deduction was on account of wrong calculation of provisioning for Non-Performing Assets (NPA). We note that the assessee who is engaged in banking business cannot write off any NPA immediately on becoming bad or doubtful. The assessee has to follow a long procedure before it write off its NPA from books because this is a regular feature of the banking industry of having NPA and there are relevant provisions under the Act providing mechanism for calculating the amount of provisioning for bad and doubtful debts. However, the probability of recovery of NPA accounts are remote and

required to write off and therefore, even if provision is made, the amounts are finally deductible under Section 36(1)(vii) of the Act because deduction is made in the year in which debt becomes bad.

08. It is claimed before us that the appellant bank has total NPA of ₹2,746.91 lacs and out of the said NPA's unsecured portion of doubtful assets are ₹1155.04 and loss assets are ₹84.50 lac. This unsecured portion has actually become bad but due to provision of Co-operative Societies Act. The appellant bank could not write off the same without the permission of the competent authority. Based on this fact it is stated that the actual claim of the assessee of ₹273.03 lac is much below the actual loss on account of doubtful assets at ₹1239.54 loss.
09. We on considering the above facts find that the mistake has been committed inadvertently at the end of the return prepare and the assessee cannot be held to be having culpable mind of evading the tax liability by way of concealing the particulars or furnishing inaccurate particulars of income. The Hon'ble Apex court in the case of *Reliance Petroproducts (P) Ltd. (supra)* has held that "*if there is no findings that any details supplied by the assessee in ints Return were found to be incorrect or erroneous or false, there would be no question of inviting penalty under section 271(1)(c) of the Act. 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, 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 attract the penalty under section 271(1)(c) of the Income Tax Act, 1961. Similarly, Hon'ble jurisdictional High Court in the case of *Shahabad Co-Op. Sugar Mills Ltd. (supra)* has held that penalty cannot be levied for a claim made which is not allowed and in the instant case the claim of excess deduction made by the assessee can at best be an inaccurate computation of income because all the particulars on the basis of which the figures of provision for bad and doubtful debts and contingent assets could be calculated were already available in the financial statements. It is not the case of the Revenue that assessee has concealed any of these details or has furnished inaccurate particulars of the loans and advances. Under these facts and circumstances, we are of the considered view that Assessing Officer erred in levying the penalty under Section 271(1)(c) of the Act on the assessee. We accordingly, set aside the findings of the learned CIT (A) and delete the impugned penalty and allow the effective grounds raised before us.

010. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27th August, 2024.

Sd/-
(SANJAY GARG)
(JUDICIAL MEMBER)

Sd/-
(DR. MANISH BORAD)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 27.08.2024

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata