IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no398/Nag./2023
(Assessment Year : 2014–15)

Asstt. Commissioner of Income Tax
Amravati Circle, Amravati ……. Appellant

v/s

Chandrapur District
Central Co–operative Bank
Civil Lines, Chandrapur 442 402 ……. Respondent
PAN – AAAJC0023P

Assessee by : Shri Mahavir Atal
Revenue by : Shri Sandeep Salonkhe

Date of Hearing – 10/09/2024	Date of Order – 18/09/2024

O R D E R

PER K.M. ROY, A.M.

The Revenue has filed the present appeal challenging the impugned order dated 12/10/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2014–15.

2. In its appeal, the Revenue has raised following grounds:–

"1. Whether on facts and in law and in the circumstances of the case, the Ld. CIT(A) is justified in ignoring that for earlier assessment years (A.Y. 2010-11, A.Y. 2011-12, A.Y. 2012-13 and A.Y. 2013-14), the claim of deduction u/s.36(1)(viia) made by assessee was disallowed in the assessment orders and such disallowance was confirmed in the appellate orders and on which appellant had not filed appeals but not withstanding this disallowance confirmed, the assessee continued to claim such deduction while being aware

of the false claim, which clearly proves that the assessee had deliberately violated the provisions of the Act and attempted to evade taxes.

2. Whether on facts and in law and in the circumstances of the case, the Ld. CIT(A) is justified in deleting penalty levied u/s 271(1)(c) without appreciating the facts that the assessee had deliberately claimed deduction u/s 36(1)(viia) without routing the same through P & L account which was not allowable under the I.T. Act, 1961.

3. Any other grounds which may be raised at the time of hearing with the permission of Hon'ble ITAT."

3. The core issue that we need to be addressed here is, whether or not the learned CIT(A) was correct in confirming the penalty levied under section 271(1)(c) of the Act by the Assessing Officer for ₹ 21.40 crore.

4. The assessee is a District Central Co–operative Bank, whose share capital is held by several individuals and no group of individuals is holding major shareholding or controlling interest in the functioning of assessee bank. For the year under consideration, the assessee filed its return of income on 30/09/2024, declaring total loss of ₹ (–) 51,65,50,638. The Assessing Officer found that the assessee has debited a sum of ₹ 2 crore towards provisions on bad and doubtful loans whereas, in the computation of income, the assessee claimed deduction on account of bad and doubtful debt under section 36(1)(viia) of the Act amounting to ₹ 64,92,08,209. The Assessing Officer sought explanation of the assessee to justify the deduction claimed under section 36(1)(viia) of the Act and also asked to explain why the said deduction should not be restricted to the amount of provision actually credited in the books of account during the year under consideration. The assessee filed details vide letter dated 18/08/2016 and 30/08/2016, stating that the Bank has claimed the said deduction under section 36(1)(viia) of the

Act and also furnished working of the said deduction which is reproduced below:–

Total Rural Advances	*₹7672,64,58,280*
AVG Advances	*₹639,38,71,523*
Income of the Bank	*₹13,09,47,425*
Allowable u/s 36(viia)	
10% of AVG advances	*₹63,93,87,152*
7.5% income	*₹98,21,057*
Total provision made	*₹64,92,08,209*

5. The Assessing Officer, however, did not accept the deduction claimed under section 36(1)(viia) of the Act and restricted the claim of allowable deduction under section 36(1)(viia) of the Act to ₹ 2 crore, which resulted into addition of ₹ 62.92 crore and the disallowance has been made from the documents submitted by the assessee along with the return of income. Consequent upon such addition, the Assessing Officer levied penalty under section 271(1)(c) of the Act for ₹ 21.40 crore. The assessee being aggrieved with the penalty order, filed appeal before the first appellate authority.

6. The learned CIT(A) deleted the penalty levied by the Assessing Officer under section 271(1)(c) of the Act by passing a detailed and elaborate order. The observations of the learned CIT(A) deleting the penalty under section 271(1)(c) of the Act are reproduced below:–

> *"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) (viia) of I.T. Act 1961. The A.O. in the assessment framed has allowed deduction u/s 36(1) (vila) of I.T. Act 1961 to the extent of Rs.2 crores in respect to provision made in books of account. The A.O. has not accepted deduction u/s 36(1) (vila) of I.T. Act 1961 at Rs.64.92 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)(viia) 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)(viia) at Rs.2 crores even though the allowable claim at the hands of appellant is computed at Rs.64.92 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.2 crores only. It is for this reason alone the deduction claimed has been restricted to Rs.2 crores. It is in respect to this disallowance of Rs.62.92 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)(via) 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 Us. DOIT reported at 78 ITD 103 has concluded that the deduction u/s 36(1)(viia) 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. (viia) 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. 4Q90/De/2013 vide judgment dated 14/07/2017 has concluded that the deduction u/s 36(1)(viia) 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) (vila) 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)(viia). It is seen that provision for bad and doubtful debt has been shown at Rs. 5,45,49,000./ Other provisions of Rs. 23,07,36,000/ have also been claimed. The appellant revised the return and claimed deduction u/s 36(1)(viia) 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 IndiaJn 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) (viia) and held that-

"Analysis of Section 36(1)(viia)

"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) (vila) 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) (viia) 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)(viia) 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)(viia) 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 aforesaidreferred to cases of Southern Technologies Ltd. Vs JCIT 320 ITR 577 and Catholic Syrian Bank Ltd. Vs 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 ie 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)(viia) 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) (viia) 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)(viia) of the Act. The said claim was in accordance with law and as provided in the provisions of section 36(1) (viia) 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)(viia) 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 IT. Act 1961 is exigible. The aforesaid proposition is in terms of decision ofHon'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 exigible. Considering the same, the levy of penalty u/s 271(1)(c) of I.T. Act 1961 is unjustified and unsustainable.

6.7 It is also seen that Hon'bie 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

> *"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 NoA15 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'bie 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.

6.8 The Hon'ble Gujarat High Court in case of Principal CIT Vs. Kutch District Central 06-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)(viia) of LT. 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 271(1)(c) of the Income Tax Act?"*
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> *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)(viia) 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.*
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> *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. 56

5. Mrs. Mauna Bhatt, (earned 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 ansi 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)(viia) 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 IT AT Mumbai Bench Mumbai in the case of Vasai Vikas Sahkari Bank Ltd. in IT A No.2869/Mum/2015vide judgement dated 27/03/2017 has concluded that no penalty u/s 271(1)(c) of IT. Act 1961 is exigible in respect to disallowance of deduction u/s 36(1) (vila) 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 IT. Act 1961 is exigible in respect to disallowance of deduction u/s 36(1)(viia) 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 IT AT 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) (viia) 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 IT. Act 1961 is unjustified and unsustainable.

6.12 The Hon'ble Apex Court in case of M/s Reliance Petro Products Pvt Ltd. reported at 322ITR 158 (SC) while considering the provisions of section 271(1)(c) of IT. 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 be 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 retum."

The ratio laid down by the Hon'bie 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.21,40,00,000/- in the case of appellant in 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 1.T. Act 1961. The penalty levied u/s 271(1)(c) of I.T. Act 1961 at Rs.21,40,00,000/- is hereby cancelled. The grounds of appeal are allowed.

7. In the result, the appeal is treated as "allowed".

The assessee being further aggrieved filed appeal before the Tribunal.

7. The learned Departmental Representative submitted that during the preceding assessment year the assessee had claimed similar deduction which was disallowance by the Assessing Officer against and such rejection of claim was accepted by the assessee by not filing any appeal against the rejection order passed by the Assessing Officer. Despite this, the assessee continued claiming such false deductions and deliberately violated the provisions of the

Act. Such violations of provisions of the Act resulted in levy of penalty under section 271(1)(c) of the Act. The learned CIT(A) ought to have not deleted the penalty under section 271(1)(c) of the Act. The learned Departmental Representative accordingly prayed that the penalty order passed by the Assessing Officer be upheld.

8. The learned Authorised Representative for the assessee submitted that the Assessing Officer did not find any fault with the figures which found to be correct. The learned A.R. submitted that the learned CIT(A) was justified in deleting the penalty imposed by the Assessing Officer under section 271(1)(c) of the Act. The learned Authorised Representative further placed reliance of the decision of the Co–ordinate Bench of the Tribunal, Nagpur Bench, rendered in assessee's own case in ACIT v/s Chandrapur District Central Co–operative Bank, ITA no.241/Nag./2018, etc., for the assessment year 2013–14, etc., vide order dated 21/08/2024, wherein the Tribunal has considered the very same issue and hence prayed that the deduction claimed may be allowed. He accordingly prayed that the order passed by the learned CIT(A) be upheld.

9. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. We find that the claim made by the assessee was on account of bona fide belief entertained by the Accountant of the assessee and was not with any mala fide intention. The deduction claimed in the computation of income is clearly on account of bona fide belief of employee of the assessee and on these facts the Assessing Officer has levied penalty under section 271(1)(c) of the Act at ₹

21.40 crore. We also find that the assessee has claimed similar deduction in preceding assessment year which was disallowed by the Assessing Officer and confirmed by the learned CIT(A) and resultantly the authorities below levied penalty under section 271(1)(c) of the Act. When the matter in respect of levy of penalty under section 271(1)(c) of the Act reached before the Tribunal, the Co–ordinate Bench of the Tribunal, Nagpur Bench, has quashed the penalty order. The observations of the very same Bench which is a party to that order rendered in assessee's own case in ACIT v/s Chandrapur District Central Co–operative Bank, ITA no.241/Nag./2018, etc., for the assessment year 2013–14, etc., vide Para–8 of the consolidated order dated 21/08/2024, the Tribunal dismissed the appeal filed by the Revenue directing deletion of penalty levied under section 271(1)(c) of the Act:–

> *"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)(viia) 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 byt eh 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 mearly 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.*

10. Since the issue in hand for adjudication is squarely covered by the aforesaid decision of the Tribunal rendered in assessee's own case in the

appeals cited supra filed by the Revenue, wherein the very same Bench is a party to that order, have decided this issue in favour of the assessee and against the Revenue for the reasons stated therein, consistent with the view taken therein, uphold the impugned order passed by the learned CIT(A) as we do not find any infirmity in the same which is a cogent and watertight order thereby deleting the penalty imposed by the Assessing Officer under section 271(1)(c) of the Act. In fact, the Assessing Officer, in the penalty order had clearly mentioned that the penalty is imposed, as the appeal against the order passed by the learned CIT(A) deleting the penalty for the assessment year 2013–14 was pending before the Tribunal at that extent time since as on date the order of the Tribunal for the A.Y. 2013–14 has become sacrosanct, we tread on the same path abiding by the principles of stare decisis.

11. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 18/09/2024

Sd/-	**Sd/-**
V. DURGA RAO	**K.M. ROY**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

NAGPUR, DATED: 18/09/2024

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.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur