IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW

BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER

ITA No.164/Lkw/2023
A.Y.-2014-15

Co-operative Cane Development Union Limited, Maholi, Ayyubi Chamber, Raniganj, Lakhimpur Kheri-262001, U.P.	vs.	The Assistant Commissioner of Income Tax, Sitapur (New)
PAN:AAATC4152F		
(Appellant)		(Respondent)

Assessee by:	Sh. Shubham Rastogi, C.A.
Revenue by:	Sh. Sanjeev Krishna Sharma, Addl CIT (D.R.)
Date of hearing:	13.08.2024
Date of pronouncement:	30.09.2024

O R D E R

PER SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER:

This is an appeal against the order of the ld. CIT(A), NFAC under section 250 dismissing the appeal of the assessee filed against the imposition of penalty under section 271(1)(c) by the Income Tax Officer, Sitapur. The grounds of appeal preferred are as under:-

> *"(1) That the penalty notice issued u/s 274 of 1. T. Act dated 09.12.2016 initiating penalty proceedings u/s 271(1) of 1. T. Act did not specify the charge that whether the assessee has concealed the particulars of Income or furnished inaccurate particulars of his income and in absence such charge the penalty notice is invalid and subsequent penalty proceedings are liable to be quashed.*
>
> *Without prejudice to above - on Merits*
>
> *(2) The Ld. C.I.T.(A) erred on facts and in law in confirming the penalty of Rs. 3,58,600/- imposed u/s 271(1)(c) of 1. T. Act without appreciating that on mere disallowance of claim/deduction u/s 80P of 1. T. Act penalty cannot be levied.*

(3) The Ld. C.I.T. (A) failed to consider that the assessee has neither furnished the inaccurate particulars of their income nor concealed the particulars of its income. accordingly, merely on disallowance of claim does not lead to levy of penalty u/s 271(1)(c) of I. T. Act.

(4) The penalty imposed is highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient opportunity to have its say on the reasons relied upon by the Ld. A.O."

2. The facts of the case are that the case was taken up for scrutiny through CASS and during the assessment proceedings, the ld. Assessing Officer observed that the assessee had earned interest amounting to Rs.10,11,998/- on FDRs / savings bank account and also interest on refund. He observed that the assessee had claimed a deduction under section 80P with regard to the interest on FDRs / savings bank account of Rs.10,11,998/- and not shown the interest on refunds received by him during the year amounting to Rs.1,57,302/-. The ld. Assessing Officer added back the interest claimed for deduction under section 80P of Rs.10,11,998/- on FDRs / savings bank accounts in view of the judgment of the Hon'ble Supreme Court in the case of ***Totgars Cooperative Sale Society Limited vs. ITO, 2010 322 ITR 283 (SC).*** He also added a sum of Rs.1,57,302/- received by the assessee as interest on income tax refund and which was purportedly not disclosed in the return of income and subsequently initiated penalty proceedings under section 271(1)(c) by way of issue of notice under section 274 r.w.s. 271(1)(c) dated 9.12.2016. A perusal of the said notice shows that the ld. Assessing Officer had not struck of any of the limbs of the said notice i.e. he had not specified in the said notice as to whether the penalty was being initiated for concealment of income or for furnishing inaccurate particulars of income.

3. Aggrieved by the levy of penalty, the assessee went in appeal before the ld. CIT(A), who, after observing that he had sustained the additions made by the ld. Assessing Officer in the quantum appeals also observed that had the case not being taken up for scrutiny, the claim under section 80P, which was otherwise not allowable, would have been allowed. Similarly, the concealment of interest of refund

would not have come to light had the case not been picked up for scrutiny therefore, he confirmed the levy of penalty under section 271(1)(c) on both counts.

4. Aggrieved by this summary dismissal of his appeal by the ld. CIT(A), the assessee is in appeal before us. In the first instance, on a query from the Bench, the ld. AR Shri Shubham Rastogi, withdrew the first ground of appeal relating to the issue that the notice under section 274 of the Act did not specify the charge whether the assessee had concealed the particulars of income or furnished inaccurate particulars of income and in the absence of such charge, the penalty notice was invalid and the subsequent penalty proceedings is liable to be quashed. However, subsequently an application was filed stating that the assessee had not given any instructions to the counsel on the basis of which counsel could have consented not to press the said ground of appeal and it was prayed that the consent given by the said counsel not to press ground no.1 may kindly be revoked and ground no. 1 of the appeal may kindly be reinstated for arguments.

5. We have duly considered the matter.Since, the issue involved is a legal ground which can be raised at any stage of the appeal in view of the decision of the Hon'ble Supreme Court in the case of ***National Thermal Power Company Limited vs. CIT (1998) 229 ITR 383,*** ground no. 1 raised by the assessee is reinstated for arguments.

6. Shri. Shubham Rastogi, C.A. (hereinafter referred to as 'the ld. AR') appeared on behalf of the assessee and argued the case. A written submission was also filed in support of his arguments. The ld. AR submitted that in the return filed under section 139 on 11.05.2015, the society had claimed a deduction of Rs.10,11,998/- on interest income derived from term deposits in nationalized banks under section 80P of the Act. It was submitted that the assessee had received interests from banks on term deposits in respect of funds not immediately required and these surplus funds were generated in the course of its regular activities. These funds were contingency funds which could be utilized at any point of time in order to provide credit facilities

to its members. The claim of the assessee was a bonafide claim and backed by the decision of the Hon'ble Allahabad High Court in the case of ***Commissioner of Income Tax vs. Cooperative Cane Development Union Limited*** 118 ITR 770 (All) and the decision in the case of ***CIT vs. Krishak Sahkari Ganna Samiti Ltd 258 ITR 594 (Alld)*** wherein it had been held that the word used in section 80P was, "attributable to" and not, "derived from" and expression, "attributable to" was wider than the expression, "derived from" and intended to cover receipts from sources other than the actual conduct of the business. It was submitted that accordingly the interest of Rs.10,11,998/- was directly linked/attributable to the business of providing credit facilities to its members and thus eligible for deduction under section 80P of the Act. It was further argued that the said two decisions upon which the claim was made had not been overruled or distinguished by any subsequent judgments of the Hon'ble Allahabad High Court. It was further submitted that the ld. Assessing Officer had levied the penalty relying solely on the decision of Hon'ble Supreme Court in the case of ***Totgars Cooperative Sale Society Limited vs. ITO, 2010, 322 ITR 283 (SC)*** and the decision of the Hon'ble Allahabad High Court in the case of ***CIT vs. Cooperative Cane Development Union Limited*** in ITA No.520/2008. It was submitted that the decision of Hon'ble Supreme Court in the case of Totgars was on a different issue because in that case, the Hon'ble Supreme Court observed that society had retained the sale consideration received from marketing the agricultural produce of its members and invested that amount in short term securities upon which it had earned interest. It was in these circumstances, that the Hon'ble Supreme Court had held that such interest income could not be said to be attributable either to the activity mentioned in 80P(2-A)(i) or 80P(2-A)(iii) of the Act. However, the facts of the assessee were entirely different. It had not retained any funds of its members, no such funds were shown as liability in the accounts of the society and it was further pointed out that in the case of ***ITO vs. Sahkari Ganna Vikas Samiti, Rupapur Chauraha, (Munder), Hardoi*** in ITA No. 467/Lkw/2013 vide order dated 15.07.2015, the Hon'ble ITAT, Lucknow Bench had dismissed the

appeal of the Revenue by relying upon the judgment of the Hon'ble Allahabad High Court in 118 ITR 770 and 258 ITR 594, in which it had distinguished the decision of the Hon'ble Apex Court in the case of Totgars, pointing out that the facts of that case were different from that of Totgars and therefore, that judgment was not applicable in the case of ***Sahkari Ganna Vikas Samiti.*** It was further prayed that the Hon'ble Karnataka High Court in the case of ***Tumkur. Merchants Souharda Credit Co-op. Ltd.*** (230) taxman 309 (Kar) had pointed out that the judgment of the Hon'ble Supreme Court was confined to the facts of that case and the Hon'ble Supreme Court had not laid down any law in the matter. Thus, it was submitted that the claim of the assessee was a legal and bonafide claim. All necessary particulars of income had been furnished and the deduction had been claimed based on the decision of the jurisdictional High Court, Tribunal and other High Court. Merely because it did not find favour with the authorities on account of difference of opinion, the penalty could not be levied unless there were grounds or reasons to show that the assessee had not disclosed all the facts before the authorities concerned or the assessee acted deliberately in defiance of law. Since, the authorities below had not given any finding that the assessee had not disclosed all the facts relating to the claim of deduction, or that the claim was bogus or inaccurate, it could not be said that in the given facts and circumstances, the assessee's claim was not bonafide. Therefore, it was submitted that the penalty levied in the given facts and circumstances was illegal and invalid. It was submitted that the Courts in several judgments had drawn a distinction between a false claim, which could not be countenanced and claims made on the basis of legal provisions ,which are debatable and quite plausible. It was further submitted that the issue was squarely covered by the judgments of the Hon'ble Allahabad High Court in the case of ***PCIT vs. Baroda Uttar Pradesh Gramin Bank*** (2022) 138 taxman.com 449, wherein the Hon'ble Allahabad High Court confirmed the order of the Tribunal deleting penalty, by observing that the assessee had made a legitimate claim for exemption under section 80P(2)(a)(i) which was purely legal in nature and even on rejection of a claim, no penalty was leviable. He

further drew our attention to the decision of the Hon'ble Allahabad High Court in the case of ***M/s Rave Entertainment (P.) Limited vs. CIT, 376 ITR 544*** wherein the Hon'ble High Court held that in the absence of any finding that the claim of the deduction was bogus, the mere fact that the claim was found to be legally unacceptable did not amount to furnish inaccurate particulars / concealment of income. The ld. AR also drew our attention to the following case laws in which it had been similarly held, -

> *"i. Devsons (P.) Ltd. vs. CIT [2011] 8 taxmann.com 87*
> *ii. Karan Raghav Exports (P.) Ltd. vs. CIT [2012] 349 ITR 112*
> *iii. Bennett Coleman & Co. Ltd. vs. ACIT reported in 36 taxmann.com 75*
> *iv. CIT vs. Gurdaspur Cooperative Sugar Mills Ltd. reported in 216 taxman 186*
> *v. Commissioner of Income Tax vs. Reliance Petro Products Pvt. Ltd. reported in 36 DTR 449*
> *vi. Principal Commissioner of Income tax vs. E-City Investments & Holdings Company (P.) Ltd., [2022] 144 taxmann.com 61.*
> *vii. Commissioner of Income Tax-I vs. Sanjiv Misra [2014] 45 taxmann.com 476."*

7. On the issue of ground no. 1 of the appeal, it was submitted that the ld. Assessing Officer has only stated in his penalty order that the proceedings ought to be initiated. Nowhere had he mentioned whether the assessee had concealed the particulars of income or furnished inaccurate particulars of income. Further, in the show cause notice, the ld. Assessing Officer simply mentioned, "Have concealed particulars of your income or furnished inaccurate particulars of such income". It was submitted that the satisfaction of the ld. Assessing Officer with regard to concealment or furnishing of inaccurate particulars of income was necessary to imitate the penalty proceedings. It was further submitted that the Hon'ble Supreme Court in the case of ***Ashok Pai*** 292 ITR 11 (SC) had held that concealment of income and furnishing of inaccurate particulars of income carried different connotation. Therefore, it was required that the ld. Assessing Officer should formerly and legally convey the specific charge. It was submitted that in the absence of non-striking of the irrelevant clause in the notice, the assessee was prevented from a chance to

show against the charges considered in the notice. It amounted to non-application of mind by the ld. Assessing Officer and there was no clear and crystalized charge being conveyed to the assessee under section 271(1)(c). He drew attention to the decision of Hon'ble Gujarat High Court in the case of ***Manu Engineering Works*** 122 ITR 306 and Hon'ble Delhi High Court in the case of ***CIT vs. Virgo Marketing (P.) Limited*** 171 taxman 156 which had held that the levy of penalty has to be clear as to the limb for which it is levied and the position being unclear, penalty is not sustainable. Furthermore, he drew reference to the case of ***SSA'S Emerald Meadows*** 73 taxman.com 248 (SC) which had been affirmed by the Hon'ble Supreme Court. The ld. AR further placed reliance on the following cases decided by the ITAT, Lucknow Bench:-

> *"i. M/s Sitaram Computech P. Ltd., in ITA No.656/Lkw/2018.*
>
> *ii. Shri. Suraj vs. Deputy Commissioner of Income Tax, Circle-1, Kanpur in TA No.331/Lkw/2019."*

8. Accordingly, it was prayed that the penalty notice dated 9.12.2016 and the resultant penalty may kindly be quashed.

9. On the other hand, the ld. Sr. DR Shri. Sanjeev Krishna Sharma argued that the assessee had not filed an appeal against the quantum addition and therefore had accepted the decision of the ld. Assessing Officer with regard to the additions made. He further pointed out that the case laws cited by the ld. AR to point out technical defect in the initiation of penalty and thereby in the penalty itself, did not bear any relevance to the facts of the case, because the case of the assessee was a case in which both limbs of the penalty had stood violated. The ld. Sr. DR pointed out that there was concealment according to the fact that the interest received on Income tax refund had not been disclosed by the assessee in its ITR and there was filing of incorrect particulars of income because the assessee had wrongly claimed a deduction under section 80P which was against the grain of the judgment of the Hon'ble Supreme Court in the case of Totgars. Therefore, an attempt to hold penalty

invalid on account of the fact that the ld. Assessing Officer had not struck off any one portion of the penalty notice would not render the penalty invalid in this particular case and as per the addition on merits, it was submitted that the facts speak for themselves. The ld. DR also drew attention to the written submission filed by him earlier in which he had quoted from the decision of the Hon'ble Supreme Court in the case of ***M/s Totgars Cooperative Sale Society vs. Income Tax Officer*** (supra) to point out that the deduction under section 80P(2) was available to only the operational income from business and other interest income which accrued to the assessee society, could not be said to be attributable to the activities of the society. He further pointed out that the aforesaid verdict of the Hon'ble Supreme Court had been followed by the Hon'ble Allahabad High Court in the case of ***CIT vs. Cooperative Cane Development Union Limited*** in ITA No. 520/2008 and thereafter in ***PCIT, Bareilly vs. Cooperative Cane Development Council, Lakhimpur*** in ITA No. 183/2016, hence, the issue being covered by judicious verdicts of the Hon'ble Apex Court and the Hon'ble jurisdictional High Court, wherein substantial questions of law had been decided in favour of Revenue. The assessee could not have claimed the deduction which it did and by doing so it had filed inaccurate particulars of income which would not have come to light had the case not been taken up for scrutiny – something which the ld. CIT(A) had pointed out while dismissing the case of the assessee. He, therefore, prayed that the penalty may kindly be sustained.

10. We have duly considered the arguments of both the parties, the legal provision and the facts and circumstances of the case. To address the technical issue first, we are in agreement with the ld. Sr. DR that in a situation where the penalty is sought to be levied for both concealment and for furnishing of inaccurate particulars of income, there is no requirement for the ld. Assessing Officer to strike out one limb from the notice under section 274 because the assessee is being asked to respond to both the charges; of concealment and of furnishing inaccurate particulars of income. Therefore, the case laws cited by the assessee's ld. Authorized

Representative that point out that such a notice which did not make the charges clear rendered the proceedings invalid, may not apply to the facts and the circumstances of the assessee's case. It is observed that in such a case, the ld. Assessing Officer ought to have used the word, "and" instead, "or" as a conjunctive in between the two charges to make it specific to the assessee that he was being required to submit explanation on both allegations, but we are of the view that only on account of the failure to do so, the technical defect in the notice would not render the proceedings invalid because the ld. Assessing Officer had quite clearly brought out the different additions in the assessment order and it could not be said that the assessee did not know the charges to which he was accused of and against which he had to make his submissions. Therefore, the flaw in the notice in this particular case appears to be covered by section 292B of the Act . Ground no. 1 of the appeal is accordingly dismissed.

11. However, on dealing with the issue on merits, it is observed that in the quantum appeal of the assessee in ITA Nos. 165, 166 & 168/Lkw/2023, we have observed that the order of the Hon'ble ITAT, Lucknow Bench in ITA No. 467/Lkw/2013 in the case of ***Income Tax Officer vs. Sahkari Ganna Vikas Samiti Limited*** is applicable to the facts of the assessee's case also. In short, it has been held that the claim of the assessee was a bonafide claim and backed by the decision of the Hon'ble High Court in the case of ***CIT vs. Cooperative Cane Development Union Limited*** reported in 118 ITR 770 and the decision of the Hon'ble High Court in ***CIT vs. Krishak Sahkari Ganna Samiti Limited reported in 258 ITR 594*** and that, in view of the fact that like Krishak Sahkari Ganna Samiti Limited, since the assessee was required to place a certain amount of its profits in specified modes as per the provisions of sections 58 and 59 of the U.P. Cooperative Societies Act, 1965 r.w.r. 173 of the U.P. Cooperative Societies Rules, 1968, the interest derived from such investments were, "attributable to" to the activities of the cooperative society and therefore, the interest derived on such investments were eligible for deduction

under section 80P of the Act. We have further observed that the deposits made on account of Provident Funds of the employees were not the investments of the assessee and the interest earned on the same, could not be said to be the interest income of the assessee as it was a liability to be paid to the beneficiaries who were the temporary employees. That being the case, in view of our findings that the facts of the assessee's case were different from the facts observed by Hon'ble Supreme Court in the case of M/s Totgars Cooperative Society Limited vs. ITO (supra) and that the two judgments of the Hon'ble Allahabad High Court cited by the ld. Sr. DR, which had affirmed the principle laid down by the Hon'ble Supreme Court were therefore, distinguishable from the facts of the assessee's case, it cannot be said that the assessee had filed any inaccurate particulars of income which would require the levy of penalty under section 271(1)(c). Be that as it may, it is also observed that the ld. AR has drawn our attention to a number of cases where it has been held by the Hon'ble Courts that a mere rejection of legitimate claim for exemption under various sections of the Act, would not automatically render the case liable for penalty. Among the cases cited are those of ***PCIT vs. Baroda Uttar Pradesh Gramin Bank*** (2022) 138 taxman.com 449 (All), ***Devsons (P.) Ltd. vs. CIT*** [2011] 8 taxmann.com 87 (Del) and ***M/s Rave Entertainment (P.) Limited vs. CIT,*** 2016 66 taxman.com 369 (All). It is observed that in view of the fact that there were judgments in its favour which allowed it to claim deduction on such interest which emanated out of investments made on account of statutory requirements, the assessee could not be faulted for filing a claim of deduction with respect to such interest. The Hon'ble Supreme Court in the case of ***CIT vs. Reliance Petro Products*** 322 ITR 158, 2010 has laid down that the words, "inaccurate particulars" mean that the details supplied in the return are not accurate, not exact or correct, not according to the truth or erroneous. It was also held that the mere making of claim which is not sustainable by law, by itself will not amount to furnishing inaccurate particulars of income. No instance has been brought on record of the assessee filing anything in the return which is not accurate, exact or correct or untruthful. In the

circumstances, merely because the ld. Assessing Officer did not accept its claim under section 80P, that by itself could not be a ground for levy of penalty under section 271(1)(c).

12. With regard to the charge that the assessee has concealed its income by not furnishing details of interest under section 244A on Income tax refund, it is observed that the assessee has filed a return in which it has shown a turnover of more than Rs. 4.4 Crores. In that event, it does not stand to reason that the assessee would intentionally seek to evade tax on a sum of Rs.1,57,302/- and it is obvious that the same is merely an omission made at the time of filing the return. It is also appropriate to note that the omission is not on account of some undisclosed source of income – which may point towards an attempt of concealment, but of interest on a refund issued by the income tax department which formed part of the records of the Department . Thus, it is inconceivable that the assessee would attempt to conceal such a receipt and this by itself, leads us to believe that it is an omission and a technical breach rather than an attempt at concealment. It is observed that the assessee has not contested the addition made on this account by filing of any appeal. In the case of ***Hindustan Steel Limited vs. State of Orissa*** (1972) 83 ITR 27, the Hon'ble Supreme Court had held as under:-

> *"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi- criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*

13. Therefore, after considering the extent of receipts disclosed by the assessee in its return and the possibility that the interest earned on Income tax refund of Rs.1,57,302/- appears to be an omission, rather than an attempt to evade tax, relying upon the spirit of the aforementioned Hon'ble Supreme Court's decision, it is held that the levy of penalty under section 271(1)(c) was not warranted on account of such technical breach. Accordingly, the penalty imposed on the assessee on both charges of concealment of income and furnishing of an inaccurate income is deleted.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 30.09.2024 at Lucknow, U.P.

Sd/-	*Sd/-*
[SUDHANSHU SRIVASTAVA]	**[NIKHIL CHOUDHARY]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: 30/09/2024
Sh

Copy forwarded to:
1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.