

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.348/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2015-2016)

The Koraput Central Cooperative Bank Limited, Head Office, NKT Road, Vikram Nagar, Near Laxmi Talkies Jeypore, Koraput	Vs	ITO, NFAC, Delhi/ ACIT, Circle-1(1), Sambalpur
PAN No. : AAAAT 2619 K		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
------------------------	----	---------------------------

निर्धारिती की ओर से /Assessee by	:	Shri Rohit Kumar Singhania, CA
राजस्व की ओर से /Revenue by	:	Shri Sanjay Kumar, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	19/11/2024
घोषणा की तारीख/ Date of Pronouncement	:	19/11/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the revenue against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 19.06.2024, passed in appeal No.NFAC/2014-15/10211785 vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1065808383 (1) for the assessment year 2015-2016, on the following grounds of appeal :-

1. That the Ld. CIT(Appeals) has erred by confirming the penalty levied even when the same relates to an amount which is already shown by the assessee bank in its books of accounts.
2. That the Ld. CIT(Appeals) has failed to appreciate the fact that the penalty has been levied on additions made which is a debatable issue.
3. That the Ld. CIT(Appeals) failed to appreciate the fact that the additions made have already been deleted by the order of CIT(A) dt:17.05.2024.
4. That the Ld. CIT(Appeals) has erred by not appreciating the fact that the assessee was guided by the Tax consultant and the provisions contained in the Act for claiming the stated amount as deductions.
5. That the assessee craves leave to add, amend, modify, alter, delete, withdraw on or more of the grounds of appeals.

2. The assessee, a Co-operative Bank, filed the return of income for the Assessment Year 2015-16 on 29.09.2015 electronically vide e-filing acknowledgement number 832790601290915 disclosing a total income of Rs.1,45,49,630/-. The case was selected for scrutiny assessment through Computer Assisted Scrutiny Selection (CASS) under "Limited" category and assessment u/s 143(3) was completed on 31.10.2017 accepting the returned income. Thereafter, the Pr. CIT-1, Bhubaneswar initiated proceedings u/s.263 of the Act and vide order u/s 263 dated 19.03.2020, set aside the assessment order u/s 143(3) dated 31.10.2017 to the A.O for the limited purpose for fresh adjudication of the issues discussed in the assessment order. Consequently assessment order was passed u/s 143(3) r.w.s. 263 of the Act, on 29.09.2021 assessing the total income at Rs. 14,80,76,031/-.

3. In the order passed u/s.143(3) r.w.s.263 of the Act, dated 29.09.2021, the AO initiated the penalty proceedings u/s.271(1)(c) of the Act and had levied penalty vide order dated 30.03.2022 at Rs.4,53,85,623/- being 100% of the amount of tax on the additions made in the assessment order. In first appeal, the Id. CIT(A) has confirmed the penalty, therefore, the present appeal is filed by the assessee before us.

4. During the course of hearing Id. AR of the assessee submitted that in the assessment order dated 29.09.2021 the satisfaction was recorded by the AO for initiation of the penalty proceedings u/s.271(1)(c) of the Act with regard to the failure on the part of the assessee for furnishing inaccurate particulars of income, however, in the order levying penalty

u/s.271(1)(c) of the Act, dated 30.03.2022, he concluded that the assessee has concealed the income and levied the penalty of Rs.4,53,85,623/-. He accordingly submitted that the AO has levied the penalty for concealment of income though the satisfaction was recorded for furnishing inaccurate particulars of income and the assessee was never show caused for concealment of income, therefore, the penalty levied deserves to be deleted. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of Dilip N Shroff Vs. JCIT (2007) 291 ITR 519 (SC) and also on the judgment of the coordinate bench of ITAT Rajkot Bench in the case of DCIT Vs. Jamnagar District Cooperative Bank Limited, passed in ITA No.247/Rjt/2016 (ITAT Rajkot) and the coordinate ITAT Ahmedabad Bench of the Tribunal in the case of Swaminarayan Cooperative Bank Limited Vs. ACIT, passed in ITA No.1411/Ahd/2019 (ITAT Ahmedabad). He, thus, prayed for the deletion of penalty so levied.

5. On the other hand, Id. CIT-DR vehemently supported the order of the lower authorities and submitted that though the satisfaction was recorded for furnishing inaccurate particulars, however, even if the penalty is levied for concealment of income both are deliberate act on the part of the assessee and, therefore, mere omission of recording proper satisfaction should not vitiate the entire proceedings. He further submitted that provisions of Section 271(1)(c) of the Act did not leave the assessee where it was deliberate or willful default and, therefore, the lower authorities have rightly levied the penalty in the present case.

6. We have heard the rival submissions and perused the material available on record. At the outset, from the perusal of the assessment order, it is seen that the AO has made the addition of Rs.13,35,26,401/- by disallowing the amounts of provisions for imbalance and provisions for infrastructure development of branch. On such disallowance, penalty proceedings u/s.271(1)(c) of the Act are initiated and the relevant satisfaction recorded by the AO is as under :-

“Penalty proceedings u/s.271(1)(c) is initiated on this account for furnishing inaccurate particulars of income.”

7. The notice issued for initiation of the penalty proceedings also refer that the penalty proceedings were initiated u/s.271(1)(c) of the Act for furnishing inaccurate particulars of income as is evident from the penalty order itself wherein para 3 the Id. AO has clearly observed so. Further before levy of penalty a final show cause notice was issued on 29.09.2021 wherein the assessee was asked to show cause as to why the penalty should not be levied for furnishing inaccurate particulars of income. However, while levying the penalty the AO considered the facts of the case and was of the satisfaction that the assessee has concealed its income and, therefore, liable for penalty u/s.271(1)(c) of the Act. Such order is duly approved by the Jt./Addl. Commissioner of Income Tax as required under the law. As is seen that the assessee was show caused to answer on the question for levy of penalty u/s.271(1)(c) of the Act for furnishing inaccurate particulars of income and the order imposing the penalty was for the concealment of income which was never questioned from the assessee. It is settled proposition of law that the penalty cannot

be levied on the fresh ground for which no notice was issued to the assessee. This view is supported by the judgment of the Hon'ble Bombay High Court in the case of CIT Vs. Samson Perinchery, reported in [2017] 88 taxmann.com 413 (Bombay), wherein it is held as under :-

Section 271(1)(c) of the Income-tax Act, 1961- Penalty - For concealment of income(General principle) -Assessment years 2003-04 to 2006-07- Order imposing penalty has to be made only on ground of which penalty proceedings has been initiated, and it cannot be on a fresh ground of which assessee has no notice [In favour of assessee]

Concealment of income and furnishing of inaccurate particulars of income in section 271(1)(c) carry different meanings/connotations and, therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under section 271(1)(c) for initiation of penalty proceedings will not warrant/permit penalty being imposed for the other. The order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the assessee has no notice. Therefore, where the Assessing Officer initiated penalty proceedings under section 271(1)(c) for furnishing inaccurate particulars of income, the order imposing penalty for concealment of income was not valid.

8. The Third Member Bench of ITAT Amritsar in the case of Harvinder Singh Vs. ITO, reported in 179 DTR 225 has dealt the identical issue and while considering the findings of Id. Accountant Member has held as under :-

“Penalty under s. 271(1)(c) -Validity-Penalty imposed on a ground different from one stated in notice-Levy of penalty under s. 271(1)(c) is attracted if the AO is satisfied that the assessee has either concealed its income or furnished inaccurate particulars of income-It is well accepted that the terms "concealment of particulars of income" and "furnishing of inaccurate particulars of income" referred to in s. 271(1)(c) denote two separate and distinct defaults and situations-Therefore, where the AO has recorded the satisfaction as regards concealment of particulars of income while initiating the penalty proceedings under s. 271(1)(c) the imposition of penalty for furnishing inaccurate particulars of income is not sustainable.”

9. The Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton & Ginning Factory, reported in [2013] 35 taxmann.com 250(Karnataka) has also expressed the similar view and observed in para 60 and 61 of the order as under :-

60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.

61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of Ashok Pai reported in 292 ITR 11 at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujrat High

Court in the case of MANU ENGINEERING reported in 122 ITR 306 and the Delhi High Court in the case of VIRGO MARKETING reported in 171 Taxmn 156, has held that 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. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind.

10. The coordinate bench of the Tribunal in the case of Indu Devi Tibarewal & Siddarthini Nanda Vs. ACIT, passed in ITA Nos.196&197/CTK/2022, order dated 13.02.2023 has also expressed the same view.

11. Thus, by respectfully following the aforesaid decisions and also looking to the fact that while levying the penalty the AO was of the view that the assessee has concealed the income despite of the fact that satisfaction was recorded for furnishing inaccurate particulars of income at the time of initiation of penalty which is clearly distinguished from the opinion framed at the time of levy of penalty.

12. With regard to the arguments of the Id. CIT-DR that both concealment of income and furnishing inaccurate particulars of income are deliberate part of the assessee. The Hon'ble Supreme Court in the case of Dilip N. Shroff (supra) has dealt this aspect also and in para 67 & 68 has clearly observed that both are separate and cannot be overlapped to each other. The relevant observations as made by the Hon'ble Supreme Court are as under :-

67. 'Concealment of income' and 'furnishing of inaccurate particulars' are different. Both concealment and furnishing inaccurate particulars refer to deliberate act on the part of the assessee. A mere omission or negligence would not constitute a

deliberate act of suppressio veri or suggestio falsi. Although it may not be very accurate or apt but suppressio veri would amount to concealment, suggestio falsi would amount to furnishing of inaccurate particulars.

68. The authorities did not arrive at a finding that the consideration amount fixed for the sale of property was wholly inadequate. The authorities also do not show that what are the inaccurate particulars furnished by the Appellant. They also do not state that what should have been the accepted principles of valuation. We, therefore, do not accept the submissions of the learned Additional Solicitor General that concealment or furnishing of inaccurate particulars would overlap each other, the same would not mean that they do not represent different concepts. Had they not been so, the Parliament would not have used the different terminologies.

13. Accordingly, we are of the considered view that the penalty levied u/s.271(1)(c) of the Act by the AO for concealment of income which is different from the satisfaction recorded at the time of initiation of penalty of furnishing inaccurate particulars of income and, therefore, the order levying penalty is not valid. Thus, the penalty levied by the AO and confirmed by the Id. CIT(A) is hereby deleted.

14. Since, we have decided the issue on the legal aspect, therefore, the grounds taken on merits become academic and not adjudicated upon.

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

Order pronounced in the open court on 19/11/2024.

Sd/-

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(MANISH AGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 19/11/2024

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
The Koraput Central Cooperative Bank Limited,
Head Office, NKT Road, Vikram Nagar,
Near Laxmi Talkies, Jeypore, Koraput
2. प्रत्यर्थी / The Respondent-
ITO, NFAC, Delhi/ACIT, Circle-1(1), Sambalpur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack