



।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

**BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

आयकर अपील सं. / ITA Nos.2082/PUN/2024

निर्धारण वर्ष / Assessment Year : 2012-13

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|--|--------|---------------------------------|
| The Jalgaon District Central Co-Op Bank Ltd., 27 Ring Road, Jalgaon – 425001 PAN: AAAAJ0225F | V s | The DCIT, Circle-1, Jalgaon. |
| Appellant/ Assessee | | Respondent / Revenue |

| | |
|-----------------------|----------------------------------|
| Assessee by | Shri Nemin Shah – AR |
| Revenue by | Shri Arvind Desai – Addl.CIT(DR) |
| Date of hearing | 18/11/2024 |
| Date of pronouncement | 22/11/2024 |

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the assessee directed against the order of
ld.Commissioner of Income Tax(Appeals)[NFAC] u/sec.250 of the
Income Tax Act, 1961; dated 09.08.2024 for the A.Y.2012-13.

The Assessee has raised the following grounds of appeal :

*“1) On facts and in circumstances of the case and in law, The
CIT(A)- NFAC erred in upholding penalty under Section 271(1)(c) of
the Income-tax Act, 1961 with respect to the addition on account of
nominal membership fees of Rs 13,69,955 even though the Assessing
Officer had not levied penalty on this issue in the penalty order.*



2) *On facts and in circumstances of the case and in law, The CIT(A)- NFAC erred in upholding penalty under Section 271(1)(c) of the Income-tax Act, 1961 with respect to the addition on account of nominal membership fees of Rs.13,69,955 even though the Hon'ble Income Tax Appellate Tribunal had restored the issue back to the file of the Assessing Officer during the course of quantum appellate proceedings vide order dated 8 March 2023.*

3) *The Appellant craves leave to add, amend, alter, vary and or withdraw any or all the above grounds of appeal at any time before or at the time of hearing."*

Submission of Id.AR :

2. The Id.Authorised Representative(Id.AR) for the Assessee submitted that for A.Y.2012-13, in the assessment order there were two additions as under :

- i) *Addition on account of provision for standard assets Rs.33,90,000/-*
- ii) *Addition on account of nominal membership fee Rs.13,69,955/-*

2.1 Ld.AR further submitted that the Assessing Officer(AO) levied penalty u/sec.271(1)(c) of the Act, vide order dated 02.03.2022 and levied penalty only with reference to provision for standard assets of Rs.33,90,000/-. Ld.AR took us through the penalty order to demonstrate the same. Ld.AR then took us through the assessment order to demonstrate that Assessing Officer in the assessment order has initiated penalty only with reference to the provision for standard assets of Rs.33,90,000/-. Ld.AR invited



our attention to Para 6.6 of the assessment order. Ld.AR further submitted that however, ld.CIT(A) erroneously confirmed the penalty order, on the quantum of Rs.13,69,955/- which was on account of nominal membership. Ld.AR submitted that when AO has not levied penalty, the impugned order of ld.CIT(A) is bad-in-law. Ld.AR also submitted copy of the ITAT Orders in assessee's own case in ITA No.395/PUN/2021 dated 08.03.2023, wherein ITAT Pune Bench has set-aside the issue of Addition of Rs.13,69,955/- to the Assessing Officer. Therefore, ld.AR for the assessee pleaded that order of the ld.CIT(A) sustaining penalty of Rs.13,69,955/- may be quashed.

Submission of ld.DR :

3. The Ld.Departmental Representative for the Revenue accepted the fact that the penalty was levied on account of addition of Rs.33,90,000/-

Findings and Analysis :

4. We have heard both the parties and perused the records. This is an appeal filed by the assessee against the order of ld.CIT(A)[NFAC] dated 09.08.2024 for A.Y.2012-13. The



Assessing Officer had levied a penalty under section 271(1)(c) of the Act for A.Y.2012-13 in the case of assessee. The relevant Paragraph 7 of the penalty order is reproduced here as under :

“7. The quantum of minimum and maximum penalty in the case of the assessee is worked out as under :

| | <i>Particulars</i> | <i>Amount.(Rs.)</i> |
|----|---|---------------------|
| 1) | <i>Concealed income as per order u/s.143(3) r.w.s. 147 of the Act dated 17/11/2019.</i> | 47,59,955 |
| 2 | <i>Concealed income as per order u/s.250 of the Act dated 23/07/2021</i> | 33,90,000 |
| 3) | <i>Tax on the concealed income confirmed by the CIT(A) as per (2) above.</i> | 8,95,070 |
| 4) | <i>Minimum Penalty leviable i.e. @100% of tax on concealed income</i> | 8,95,070 |
| 5) | <i>Maximum penalty leviable i.e. @ 300% of tax on concealed income</i> | 26,85,210 |

8. Considering the facts of the case, minimum penalty of Rs.8,95,070/- u/s.271(1)(c) of the Income Tax Act, 1961 is hereby levied on the defaulter assessee. Issued DN/Challan accordingly.”

4.1 Thus, the Assessing Officer has levied the penalty only with reference to addition of Rs.33,90,000/- made on account of provision for standard assets.

4.2 We have perused the assessment order, the relevant paragraph 6.6 of the assessment order is reproduced here as under:

“6.5 Thus, as per the above, judicial pronouncement, the assessee is not eligible for the standard assets deduction as claimed.

6.6 IN view of the above, the amount of Rs.33,90,000/- is added back to the total income of the assessee. Penalty proceedings are



separately initiated for furnishing inaccurate particulars of income u/s 271(1)(C) of the Act.

7. *Subject to the above remarks, revised computation of Income is as under :*

| | | |
|---|-----------------------|--------------------------|
| <i>(a) Business Income as per Order u/s 143(3) dated 25.03.2015</i> | | <i>Rs.12,92,92,847/-</i> |
| <i>Add:</i> | | |
| <i>1. On Account of provision for standard Asset</i> | <i>Rs.33,90,000/-</i> | |
| <i>2. On Account of nominal membership fees</i> | <i>Rs.13,69,955/-</i> | <i>Rs.47,59,955/-</i> |
| <i>Total Business Income</i> | | <i>Rs.13,40,52,802/-</i> |

4.3 Thus, in the assessment order, penalty was initiated only with reference to addition of Rs.33,90,000/-. Thus, in the assessment order, no penalty was initiated on account of Nominal Membership Fee of Rs.13,69,955/-.

4.4 The Id.CIT(A) in the order dated 09.08.2024 in paragraph 4.4 has directed the Assessing Officer to delete the penalty levied under section 271(1)(c) of the Act on account of provision for standard assets of Rs.33,90,000/-. Thus, the penalty levied under section 271(1)(c) of the Act, vide order dated 02.03.2022 has been completely deleted by the Id.CIT(A). Revenue has not filed any appeal against the said deletion of penalty on account provision for standard assets.



4.5 However, erroneously ld.CIT(A) in paragraph 4.6 and 4.7 held that penalty on account of nominal membership of Rs.13,69,955/- is upheld. This is a blatant incorrect finding by ld.CIT(A) as no penalty has been levied by Assessing Officer on account of nominal membership of Rs.13,69,955/-. Therefore, there was no cause of action for ld.CIT(A) to state that penalty pertaining to Rs.13,69,955/- is upheld. Accordingly, we are of the opinion that said paragraph 4.6 and 4.7 of the ld.CIT(A)'s Order is bad-in-law. Accordingly, grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the open Court on 22nd November, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 22nd Nov, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.



6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.