

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND SHRI KESHAV DUBEY, JUDICIAL MEMBER**

**ITA No. 1662 & 1663 /Bang/2024
Assessment Year : 2014-15 & 2015-16**

M/s. Hubli Saraku
Saganikedarara
Sahakari Pattina Sangha
Niyamita,
4-5, 3rd Floor, D Block,
Shindhe Complex,
Neeligin Road,
Hubballi – 580 029.

PAN : AAAAH 9467 M

APPELLANT

Vs. The Income Tax Officer,
Ward – 2(1),
Hubli.

RESPONDENT

Appellant by : Shri. Hemant Pai and
Ms. Smrithi Athreya, CA
Respondent by : Ms. Neera Malhotra,
CIT(DR)(ITAT), Bangalore.

Date of hearing : 13.11.2024

Date of Pronouncement : 29.11.2024

ORDER

Per Prashant Maharishi, Vice President :

1. These are 2 appeals filed by Hubli Saraku Saganikedarara Sahakari Pattina Sangha Niyamita Hubballi [Assessee / Appellant] for assessment year 2014-15 and 2015 -16 against appellate orders passed by The National Faceless Appeal Centre , Delhi [the learned CITA (A)] dated 27th June 2024 where in appeal filed by Assessee against the penalty orders passed by The Income Tax Officer ward-1 Hubli [The Id AO] levying penalty under section 271 [1] [c] of The Income tax Act , 1961, [the ACT] were made. Penalty for assessment year 2014 - 15 was levied for ₹8,33,092 and for assessment year 2015 - 16 for Rs. 931 1426/-. For both these assessment years, penalty orders and Appellate Orders are on the similar lines.

2. Facts for AYH 2014-15 are that,
- i. assessee is a credit cooperative society engaged in the business of providing credit facilities to its members for assessment year 2014 – 15, filed its return of income on 31/10/2014 at Rs. Nil after claiming deduction under section 80 P (2) (a) of the income tax act of Rs. 3,260,874/-.
 - ii. Return of income was picked up for scrutiny resulting into an assessment under section 143 (3) of the act on 15/12/2016 determining the total income of Rs. 8,075,924 wherein the learned assessing officer has disallowed the claim of the assessee under section 80 P (2) (a) (i) of the act on the interest income earned from members and interest received on fixed deposits from banks. The Question raised by the Id.AO was whether assessee is a primary agricultural credit cooperative society despite there being a decision of Honourable Karnataka High court in case of CIT V Sri Biluru Gurubasava patina Sahkarai Sangha Niyamita , bagalkot dated 5/2/2014 against which Revenue has Filed SLP which is pending. Thus, the amount of Claim of deduction of Rs 16,81,635/- was disallowed. Interest of FDR was also not allowed as deduction u/s 80P(2)(a)(i) of the Act of Rs 194289/-. Thus, total income was assessed at Rs 18,75,920/-.
 - iii. The assessee preferred an appeal before the learned CIT – A wherein the appeal of the assessee was partly allowed holding that assessee is eligible for deduction under that section in respect of interest income earned from regular members U/s 80 P (2) (a) (i) of The Act. On interest income assessee was denied deduction u/s 80 P (2) (a) (i) as assessee failed to produce the details but allowed the cost of funds.
 - iv. The learned assessing officer initiated the penalty proceedings under section 271 (1) (C) of the act by issuing a notice dated 15/12/2016 for furnishing of inaccurate particulars of income but passed the penalty order on 20/3/2020 holding that the assessee

has concealed particulars of income and imposed a penalty of Rs. 833,092.

- v. Against this penalty order, assessee preferred an appeal before the learned CIT – A wherein the appeal was dismissed for non-prosecution by the appellate order dated 27/6/2024.
 - vi. Therefore, assessee is in appeal before us.
3. Learned authorized submitted that that the penalty proceedings are not warranted under section 271 (1) (c) of the act on the above disallowance because of the reason that.
- i. Assessing officer has recorded his inability to follow the binding decision of the honourable jurisdictional High Court in case of 56 taxmann.com 280 by contending that the revenue special Leave petition against the decision of the High Court is pending before the honourable Supreme Court. That SLP was also dismissed by the honourable Supreme Court. Since the binding precedent is in the favour of the assessee it was eligible for deduction at that particular point of time and consequently the penalty levied under section 271 (1) (c) of the Act be deleted.
 - ii. Even otherwise it was submitted that the issue of deduction under section 80 P of the act is highly debatable and there are contradictory decisions of the honourable jurisdictional High Court also compared to the decision of the honourable high courts of the other state and therefore on such an issue the penalty could not have been levied where there are two judicial opinions making the deduction highly debatable.
 - iii. that the penalty proceedings were initiated for furnishing inaccurate particulars of income, but the penalty was levied for concealing the particulars of income and therefore also in view of the decision of the honourable Karnataka High Court in 35 taxmann.com 250, the penalty could not have been levied.

- iv. For AY 2018-19 in case of ITA No 1002/ bang/20224 dated 4-07-2024 on identical facts and circumstances penalty u/s 270 A of The Act is deleted.
 - v. Order passed by the learned assessing officer levying the penalty is barred by limitation for the reason that the order of the learned CIT – A was passed on 28/11/2018 whereas the penalty order was passed on 20/3/2020 after 15 months from the month in which the order of the learned CIT – A passed.
4. The learned authorized representative referred to the additional ground of appeal wherein it was submitted that the penalty proceedings are initiated on one limb and imposed on another limb and consequently same has vitiated the entire proceedings. Though it was stated to be an additional ground, but it was challenging the levy of the penalty by the learned assessing officer and confirmation by the learned CIT – A. It is merely an argument advanced.
 5. The Ld DR supported the orders of the Id Lower authorities and submitted that the Id CIT (A) has dismissed appeal of assessee for non prosecution.
 6. We have carefully considered the rival contentions and the orders of the learned lower authorities with respect to the assessment as well as penalty proceedings. Looking at the assessment order passed for the assessment year 2014 – 15, we do not find that the penalty initiated by the learned assessing officer for any of the twin charges. The only mention is that the penalty under section 271 (1) (C) is initiated and issue the notice. However, in paragraph number 6 of the penalty order the assessing officer has specifically held that assessee has filed inaccurate particulars of income. It was so that assessee has claimed deduction under section 80 P of ₹ 3,260,874/- which was computed by the learned assessing officer considering only the interest income on from regular members of ₹ 504,783. Therefore, the sum of ₹ 2,706,090 representing interest income from lending activity to persons other than regular members and interest income on the fixed deposit was brought to tax. The assessee did not furnish any reply. In

paragraph number 10 of the penalty order also the learned assessing officer has correctly held that assessee has furnished inaccurate particulars of its income. Therefore, it is not the case that the initiation of penalty was on one limb and same was levied on another limb.

7. However, we consider that the assessee has made a claim of deduction under section 80 P (2) of the act of ₹ 3,260,874/-. The deduction was restricted to ₹ 504,783 holding that only the interest income earned from the regular members of the society is eligible for deduction. The interest income earned on fixed deposit was also not granted as deduction to the assessee. So far as the interest income earned from members, the issue is now decided by the honourable Supreme Court in 431 ITR 1. However, we are not on the issue that whether the claim of the assessee is correct or not. We are on the issue whether the issue is highly debatable or not when it is ultimately settled by the honourable Supreme Court with respect to the deduction of interest income earned by the assessee from which kind of members. If the issue is so debatable, the assessee cannot be subjected to penalty for furnishing inaccurate particulars of income. Further with respect to the deduction of interest income earned by the assessee from fixed deposit with other cooperative societies is also highly debatable in view of 2 decisions of the honourable jurisdictional High Court, it cannot be said that the assessee has furnished inaccurate particulars of income. In view of the above facts and circumstances where the issue is highly debatable, there is no question of levying penalty for furnishing inaccurate particulars of such income . Identical issue is also decided by the coordinate bench in case of Siddapura Taluka Agricultural Produce Coop marketing society Ltd V ITO [ITA No 1002/bang/2024 AY 2018-19 Dated 4-7-2024] deleting the penalty u/s 270 A of the Act. Accordingly, the orders of the learned lower authorities are reversed on that ground and the learned AO is directed to delete the penalty levied under section 271 (1) (c) of the act for Ay 2014-15 of Rs 833092/-.

8. The fact for AY 2015-16 are also identical where in penalty u/s 271 (1) (c) of the Act of Rs 931426/-. For Reasons given by us for AY 2014-15 deleting penalty u/s 271 (1) (c) of the Act also applies to this AY and therefore , reversing the orders of the Id lower Authorities, we direct Id AO to delete the penalty u/s 271 (1) (c) of Rs. 931426/- .
9. Accordingly appeal of the assessee is allowed for both these years.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

Sd/-

(KESHAV DUBEY)
Judicial Member

(PRASHANT MAHARISHI)
Vice President

Bangalore,
Dated : 29.11.2024.

/NS/* / *Desai S Murthy* /

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|---------------|----------------------------|
| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT,
Bangalore. |

By order

Assistant Registrar,
ITAT, Bangalore.