

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “E”, MUMBAI  
BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER  
ITA NO. 3463/MUM/2024 (A.Y: 2014-15)**

**The Kunbi Sahkari Bank Ltd.**  
Abhilasha Shramik Co-Op. Hsg.  
Society Ltd., Ground Floor, Vs.  
Kingstone Tower, G. D. Ambedkar  
Marg, Kalachowki, Mumbai – 400  
033

**PAN: AAAAT0034A**  
**(Appellant)**

**NFAC Delhi /CIT (A)-3,  
Mumbai**

**(Respondent)**

<b>Assessee Represented by</b>	<b>: Shri Moulik Chokshi, Ld. AR</b>
<b>Department Represented by</b>	<b>: Shri Hemanshu Joshi, Ld. DR</b>
<b>Date of conclusion of Hearing</b>	<b>: 08.01.2025</b>
<b>Date of Pronouncement</b>	<b>: 06.02.2025</b>

**ORDER**

**PER RAJ KUMAR CHAUHAN (J.M.):**

1. This appeal is filed by the appellant/assessee against the order of  
Learned Commissioner of Income Tax (Appeals) / National Faceless



Appeal Centre (NFAC), Delhi [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] dated 17.01.2024 for the A.Y. 2014-15.

2. The brief facts of the case are that the assessee filed his return of Income on 29/11/2014 declaring total income at Rs. Nil after setting off brought forward of loss of Rs. (-) 59,09,836/- of A.Y. 2012-13. The assessment was completed u/s 143(3) vide order dated 22/12/2016 disallowing the claim of set off of brought forward loss of A.Y. 2012- 13 amounting to Rs. 59,09,836/- resulting in the taxable income of the assessee being determined at Rs. 59,09,836/- as against the returned income of Rs. Nil. In the assessment order, the Assessing Officer initiated penalty proceedings u/s 271(1)(c) by observing that the assessee has furnished inaccurate particulars income. The show cause notice u/s 274 r.w.s 271 dated 22/12/2016 was issued along with the assessment order and duly served on the assessee. In response to the said notice, assessee filed the relevant documents. Considering the facts and circumstances of the case, AO levied minimum penalty of Rs. 18,23,051/- being 100% of the tax sought to be evaded is hereby imposed u/s 271(1)(c) of the Act.



3. Aggrieved by the order of AO, assessee preferred the appeal before Ld. CIT(A) and Ld. CIT(A) dismissed the appeal of the assessee by observing as under:-

*In view of the above findings by the AO wherein the Appellant has claimed set-off of non-existent loss of Rs 59,09,836/- against its taxable income of the said amount and neither filed revised return nor brought the matter suo moto to the notice of the AO during the assessment proceedings, the AO was justified in levying penalty for furnishing inaccurate particulars of income u/s 271(1)(c). This ground is dismissed.*

4. Aggrieved by the aforesaid order, the assessee preferred the appeal before us on the following grounds:-

- 1. That on the facts and in the circumstances, Ld. Commissioner of Income tax (Appeals) erred in not appreciating the facts and law in the present case and thereby passing the impugned order. The same therefore needs to be set aside and*
- 2. On the facts & in the circumstances of the case the Ld. Commissioner of Income tax (Appeals) erred in sustaining the penalty under Section 271 (1) (c) of Rs.1823051/-/- being in the nature furnishing inaccurate particular of income pertaining to carry forward losses without understanding the facts & circumstances of the case & the reasons assigned for doing so are wrong & contrary to the provisions of the Income tax Act & the rules made there under.*
- 3. The Appellant craves, leave to add/alter/amend / and /modify the above grounds of Appeal."*



5. We have heard Ld. AR on behalf of the assessee. Ld. AR argued that Ld. CIT(A) has not considered the detail submission made by the assessee as is evident from the observation of Ld. CIT(A), therefore the impugned order is not sustainable. It is submitted by Ld. AR that an opportunity be given to the assessee of being heard, therefore requested to restore the matter to the file of Ld. CIT(A) for deciding afresh. On the other hand, Ld. DR relied on the orders of AO as well as Ld. CIT(A).
  
6. We have considered the rival submissions and perused the impugned order of lower authorities. The Ld. CIT(A) in his order at para no. 5 has observed simply relying upon the assessment order passed by AO, the extracts of the same are as under:-

*I have carefully considered the submissions made by the Appellant. The relevant portion of the penalty order are reproduced below:*

*"3. In the return of income filed on 29/11/2014, the assessee had claimed set off of Rs. 59,09,836/- as brought forward loss of A.Y. 2012-13. The assessment for the A.Y. 2012-13 was completed on 15/01/2015 and total income was assessed at Rs. Nil and loss of Rs. 2,29,55,095/- pertaining to the earlier years i.e. A.Y. 2009-10 and 2010-11, was allowed to be carried forward. In A.Y. 2009-10 and 2010-11, the carry forward of loss claimed by the assessee ceased to exist on account of addition made to the total income in the assessment orders of these years. The assessments happened prior to the filing of the return of income for the A.Y. 2014-15. Hence, when the*



*assessee filed its return of Income for A.Y. 2014-15, It filed inaccurate particulars of its income by claiming set off non-existent loss of Rs. 59,09,836/- against its taxable income of the said amount.*

*4. The submission made by the assessee that, facts relating to loss were within knowledge of the department, that the Assessing Officer was duty bound to verify and allow correct loss is not relevant and does not mitigate the failure of the assessee to disclose the correct particulars of its income in the return filed by it. The assessee has stated in passing that inadvertent mistake was rectified before finalization of assessment. However, no proper explanation has been given which supports the claim of the mistake being inadvertent. The assessee is regularly assessed to tax and has assistance from professionals within its organization and from outside for filing of tax returns and representation in tax matters. The claim that the mistake was rectified is also not clear because the assessee neither filed revised return nor brought the matter suo moto to the notice of the Assessing Officer during the assessment proceedings. Even after the order of the CIT(A) dated 23/08/2013 by which part relief was granted in respect of quantum addition for A.Y 2009-10 and 2010-11, the assessee was not justified in claiming set off of loss Rs. 59,09,836/-in its return for the A.Y. 2014-15.*

*5. The reliance placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroproducts P. Ltd. (322 ITR 158) is incorrect because the claim made by the assessee in its return has been found to be incorrect / erroneous / false. The claim is patently erroneous and the assessee had no basis for making such claim. The assessee neither corrected itself voluntarily before commencement of the assessment proceedings nor corrected itself before the assessing officer during the assessment proceedings. Thus, there is nothing to show that the claim made by the assessee was bonafide and inadvertent."*



*In view of the above findings by the AO wherein the Appellant has claimed set-off of non-existent loss of Rs 59,09,836/- against its taxable income of the said amount and neither filed revised return nor brought the matter suo moto to the notice of the AO during the assessment proceedings, the AO was justified in levying penalty for furnishing inaccurate particulars of income u/s 271(1)(c). this ground is dismissed.*

*In the result, the appeal is dismissed.*

7. It is thus apparent from the impugned order that Ld. CIT(A) has not raised any point of determination and did not render any reasoned decision. The requirement for passing a reasoned order stipulated in Section 250(6) of the Act, as under:-

***Section 250(6) in The Income Tax Act, 1961***

*(6) The order of the [\* \* \*][ Omitted by Act 21 of 1998, Section 65 (w.e.f. 1.10.1998).][Commissioner (Appeals)][ Inserted by Act 29 of 1977, Section 39 and Schedule V (w.e.f. 10.7.1978).] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*

8. In view of the above, we are of the opinion that the Ld. CIT(A) has not passed a reasoned order, therefore the impugned order is not legally sustainable in the eyes of law. Accordingly, the matter needs to be restored to the file of the Ld. CIT (A) for giving effective hearing to the



assessee who shall present its case before the Ld. CIT(A) within 60 days.

The impugned order is accordingly set aside and appeal filed by the assessee is allowed in above terms.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 06.02.2025.**

**Sd/-**

**(B R BASKARAN)  
(ACCOUNTANT MEMBER)**

Mumbai / Dated 06.02.2025  
*Dhananjay, Sr.PS*

**Sd/-**

**(RAJ KUMAR CHAUHAN)  
(JUDICIAL MEMBER)**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.  
//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mumbai**