आयकर अपीलीय अधिकरण, डी, न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
माननीय श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
HON'BLE SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.2740,2741,2742 & 2743/CHNY/2024**
निर्धारण वर्ष/Assessment Years: 2011-12, 2014-15, 2015-16 & 2016-2017.

The Government Tele Communication Employees Co-Operative Society Ltd, 37-A, Sembudoss Street, Broadway, Chennai 600 001. **PAN: AABAT 3072B**	Vs	The Income Tax Officer, Non Corporate Ward 11(1) Chennai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri M. Karunakaran, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri A.Sasikumar, CIT

सुनवाई की तारीख/Date of Hearing : 06.03.2025
घोषणा की तारीख/Date of Pronouncement : 17.03.2025

आदेश /O R D E R

PER BENCH:-

These four appeals filed by the assessee are directed against different orders of the ld. Commissioner of Income Tax (Appeals) 13, Chennai dated 13.07.2017, 16.08.2018, 21.01.2020 and 27.01.2020 relevant to the assessment years 2014-15, 2015-16, 2011-12 and 2016-17. Since common

grounds in identical facts involved in these appeals, heard together and are being disposed of by this common order for the sake of brevity.

2. The sole issue is whether the lower authorities are justified in levying penalty u/s 271(1)(C) of the Act in the peculiar facts of the case for AYs 2011-12, 2014-15, 2015-16 & 2016-17 ?

3. First we are taking ITA No.2740/Chny/2024 for AY 2011-12 as lead case. Brief facts of the case are as under:

The appellant is a Multi state Co-operative Society and governed by the Multi State Co-operative Societies Act. For the assessment year 2011-12, the appellant has filed the return of income on 11/04/2018 admitting an income of Rs. 3,63,300 to tax after claiming exemption u/s 80P on Rs.8,49,00,367/-. In the assessment completed u/s 143(3) r/w 147 of the Act on 17/12/2018, the AO has held that the appellant is not entitled to exemption u/s 80P of the Act on interest on staff advance and interest on FDs and Savings Bank Interest. He therefore computed the taxable interest on staff advance and interest on FDs and Savings Bank Interest. While computing the interest on staff advances, the assessing officer has taken into account the operating expenses and also the interest paid on borrowals on proportionate basis but while computing the taxable interest on FDs and Savings Bank Interest, the assessing officer has taken only the operating expenses and not the interest on borrowals which had direct link with fixed deposits made. The Assessing officer has computed the taxable interest on staff advance at Rs. 6,29,341/-

and taxable interest on fixed deposits and savings bank at Rs. 98,63,341/-. The Assessing officer while completing the said regular assessment has not initiated any penalty proceedings under section 271(1)(c) of the Act. The matter came before the Income-tax Appellate Tribunal and the ITAT has passed order on 10/02/2022 in ITA Nos. 2478/Chny/2017, 2703/Chny/2018, 558 & 559/Chny/2020 holding that the interest on staff advance and interest on FDs and Savings Bank interest are not eligible for deduction u/s 80P. The ITAT however directed the Assessing officer to consider the interest expenses incurred against the interest on FDs and savings bank Interest as under:

4. The next common ground raised in the appeals of the assessee relates to confirmation of disallowance of interest income earned from FDs and Trusts, which was treated as income from other sources. The ld. Counsel for the assessee has submitted that similar issue was subject matter in appeal before the Tribunal for the assessment years 2012-13 and 2013-14 and the Tribunal has remitted the matter back to the file of the Assessing Officer for de novo adjudication and thus, prayed that similar directions may also be given for the assessment years under appeal. The ld. Counsel further submitted that there is a direct nexus between the loans availed by the assessee and FDs and therefore, the entire expenditure has to be allowed.

5 On the other hand, the ld. DR strongly supported the order passed by the ld. CIT(A) as well as Assessing Officer.

6 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the assessment order, the Assessing Officer has noted that the interest from deposits with trusts and savings accounts has been charged under section 56 of the Act, which is not secured by loans. It was the earnings of the society from its appropriations from net profit. Section 57 of the Act provides for deductions of any other expenditure not being in the nature of capital expenditure laid out or expended wholly or exclusively for the purpose of making or earning "income from other sources" of Chapter IV-F of the Act. The primary objective of the society is to extend credit facilities to the members. The interest income from deposits with trusts and savings account interest was from such deposits only and was totally independent of the deposits collected by the assessee from its members or loans borrowed from banks. Hence proportionate interest and finance charges are not allowed as expenditure. Accordingly, the ld. CIT(A) confirmed the order of the Assessing Officer.

7 Similar issue on an identical facts and circumstances was subject matter in appeal before the Tribunal in assessee's own case for the assessment years *2012-13 and 2013-14 in I.T.A. Nos. 2898 & 2899/Chny/2016 vide order dated 02.12.2020*, the Tribunal has observed and held as under:

> *11. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below.*
>
> *12. The only issue for consideration is the expenditure incurred by the Assessee to earn the interest income. The case of the Assessee is that the Assessing Officer has treated the interest income earned by the Assessee has income from other sources and estimated the expenditure only. In the*

Assessment Order, the Assessing Officer has not properly considered the expenditure incurred by the Assessee to earn the interest income and simply estimated the interest expenditure.

13. In our view, it is not correct. Thus we set aside the order passed by the learned Commissioner of Income Tax (Appeals) on this count and remit back the matter back to the Assessing Officer to adjudicate the issue afresh in accordance with law de novo."

8. Respectfully following the decision of the Coordinate Benches of the Tribunal in assessee's own case for the assessment years 2012-13 and 2013-14 vide order dated 02.12.2020 (supra), we set aside the order passed by the ld. CIT(A) and remit the matter back to the file of the Assessing Officer to adjudicate the issue afresh in accordance with law de novo after affording an opportunity of being heard to the assessee.

9. Though the ITAT has only remitted the issue of considering the expenses against interest receipts from FDs, the Assessing officer made an assessment afresh u/s 143(3) r/w 254 on 13/04/2022 as if the assessment itself is set aside and determined the taxable income as under after considering the interest paid against interest receipts from FDs and savings Bank Interest.

10 The Assessing officer initiated penalty proceedings u/s 271(1)(c) in the aforesaid order passed on 13/04/202 for furnishing inaccurate particulars of income. During the course of penalty proceedings, the appellant had submitted its response against the proposal to levy penalty under section 271(1)(c). The Assessing officer however levied penalty of Rs.7,34,291/-u/s 271(1) by taking the above income assessed of Rs. 23,76,348/-.

11 Firstly, the appellant submits that it has furnished all the particulars of income in the return of income and claimed exemption u/s 80P on the interest income earned. This claim was only disallowed by the assessing officer and the appellant agitated the issue till the level of the ITAT. The appellant submits that it cannot be charged with furnishing of inaccurate particulars of income simply because the claim made by the appellant was not allowed by the assessing officer. The appellant rely on the decision of the Apex Court in the case of Reliance Petro Products Ltd. (189 Taxmann 322) wherein it was held as under:-

> *`"Merely because assessee had claimed expenditure which claim was not accepted or was not acceptable to the appellant (Department) that by itself would not in our opinion attract penalty under section 271(1)(c) of the Act. If court accepts contention then in case of every return where claim made is not accepted by Assessing officer for any reason, assesse will invite penatlyunder section 271(1)(c) of Act That is clearly not intendment of. Legislature".*

12 The appellant further submits that the above decision of the Apex Court was followed by the High Court in the case of Surabhi Homes P Ltd. In ITA No. 68-69/2016 dated 21/03/2017 wherein the Court confirmed the finding of the Tribunal holding that no penalty should have been levied under section 271(1)(c) of the Act for denial of deduction claimed under section 801B(10) of the Act. Secondly, the assessing officer is not correct in making a fresh assessment u/s 143(3) r/w 254 while giving effect to the order of the ITAT referred above. The Hon'ble ITAT has not set aside the assessment as such but only remitted a particular issue for denovo consideration and therefore the

assessing officer ought to have passed an order giving effect to the ITAT order. The action of the assessing officer in making a fresh assessment u/s 143(3) and in initiating fresh penalty proceedings u/s 271(1)(c) is not correct in law and not justified.

13. Per contra, the ld. DR relied upon the orders of the lower authorities and pleaded for the dismissal of appeal.

14. We have heard the rival submissions, perused the appeal records and the earlier order of the co-ordinate bench of Tribunal dated 10.02.2022 in ITA Nos.2478/Chny/2017, 2703/Chny/2018, 558 & 559/Chny/2020. We find that in the I.T.A. Nos. 2898 & 2899/Chny/2016 vide order dated 02.12.2020 the Tribunal observed and held as under:-

> '12. *The only issue for consideration is the expenditure incurred by the Assessee to earn the interest income. The case of the Assessee is that the Assessing Officer has treated the interest income earned by the Assessee has income from other sources and estimated the expenditure only. In the Assessment Order, the Assessing Officer has not properly considered the expenditure incurred by the Assessee to earn the interest income and simply estimated the interest expenditure.'*
>
> *13. In our view, it is not correct. Thus we set aside the order passed by the learned Commissioner of Income Tax (Appeals) on this count and remit back the matter back to the Assessing Officer to adjudicate the issue afresh in accordance with law de novo."*

15. It is crystal clear that the co-ordinate bench of Tribunal referred supra has been followed verbatim in order of Tribunal dated 10.02.2022 in ITA Nos.2478/Chny/2017, 2703/Chny/2018, 558 & 559/Chny/2020. The only issue was 'the expenditure incurred by the Assessee to earn the interest income' and nothing beyond. We also find that out of various issues raised only issue

was set aside by the Tribunal is to see 'the expenditure incurred by the Assessee to earn the interest income'. It is also on record that no penalty has been initiated pursuant to the original assessment orders in AYs 2011-12, 2014-15 & 2016-17 except AY 2015-16 and that too under both limbs of section 271(1)(c) which was on the face of it unsustainable. We are of the considered view that the assessee cannot be put to worse situation by the AO when an issue was remitted back to the Assessing Officer to adjudicate the issue afresh in accordance with law de novo by the Tribunal for a limited purpose. It is trite law, settled by a catena of Supreme Court judgments, that the Revenue cannot beat around the bush and keep changing the goal post at each stage. Once the Revenue had taken a particular stand, the same cannot be completely changed and/or supplemented by a different reason or ground.

16. We further find that quantification/re-work of expenditure to earn interest income on the direction of the Tribunal does lead to concealment of income or furnishing of inaccurate particulars of income. The AO has not pin pointed any inaccurate particulars in the return of income filed by the assessee pursuant to notice u/s 148. Hence, in the light of above factual matrix, we delete the penalty levied.

17. Since the issue and grounds of appeal for AY 2011-12 are similar to AYs 2014-15, 2015-16 & 2016-17 hence, our order in AY 2011-12 is mutatis mutandis apply to the AYs 2014-15, 2015-16 & 2016-17 also.

18. In result, appeals of the assessee in ITA Nos.2740, 2741, 2742 & 2743/CHNY/2024 are allowed.

Order pronounced in the open court on 17th day of March, 2025.

Sd/-	Sd/-
एस.आर. रघुनाथा	**(मनु कुमार गिरि)**
(S.R. RAGHUNATHA)	**(MANU KUMAR GIRI)**
लेखा सदस्य/ ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated, the 17th day of March, 2025
KV
आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.