



IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI
BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA Nos. 006/PAN/2025
Assessment Year : 2009-10

Shri Anantanath Alpasankhyatar
Vivid Uddheshagal Souhardha Sahakari
Sangh Niyamit ['SAAVUSSSN']
1738, Anantnath Building,
Jain Galli, Main Rd., Kannur
Niyamit Kalloli, Kalloli, Belagavi.
PAN : AAGTS1962B

..... Appellant

V/s

Income Tax Office,
Ward-1, Gokak, Belagavi.

..... Respondent

Appearances

Assessee by : Mr Sachin Nichal ['Ld. AR']
Revenue by : Mr Deshmukh Prakash ['Ld. DR']
Date of conclusive Hearing : 02/06/2025
Date of Pronouncement : 03/06/2025

ORDER

PER G. D. PADMAHSHALI;

This appeal is filed against DIN & Order 1070608483(1) dt. 25/11/2024 passed by the National Faceless Appeal Centre, Delhi ['Ld. NFAC' hereinafter] u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] which in turn arisen out of order of penalty dt. 23/03/2022 passed u/s 271(1)(c) of the Act by the National Faceless Assessment Centre Delhi ['Ld. NFeAC' hereinafter] anent to assessment year 2009-10 ['AY' hereinafter].



2. **Tersely stated facts of the case are that;**

2.1 The assessee for the year under consideration filed its return of income with its PAN '**AAGTS1962B**' on 16/10/2009 declaring total income at NIL after claiming deduction u/s 80P of chapter VI-A of the Act for sum of ₹10,15,647/-. The case of the assessee was selected for scrutiny and consequential assessment u/s 143(3) of the Act completed by the ITO, Ward-1, Gokak ['Ld. AO' hereinafter] on 15/12/2011 whereby claim for 80P(2) deduction was entirely denied holding the assessee to be a 'primary co-operative bank' not eligible for deduction u/s 80P(4) r.w.s. 2(24)(via) of the Act, and thus assessed the total income at ₹10,15,647/-. Further by such order the Ld. AO also initiated a penalty proceedings u/s 271(1)(c) r.w.s. 274 of the Act for furnishing inaccurate particulars. When the penalty show cause & other notices remained unattended, the Ld. NFeAC by an order dt. 23/03/2022, culminated the penalty proceedings by imposing a penalty of ₹2,95,945/- equal to 100% of tax ought to have evaded on the assessed income.



2.2 Meanwhile the findings of the Ld. AO & the assessment was challenged by the assessee before Ld. CIT(A), who reversed the findings of the Ld. AO and treating the assessee as society eligible for 80P(2) claim, partly allowed deduction in relation to interest income earned by the assessee on short-term bank deposit/investment and retained the balance disallowance relating to interest income earned on long-term bank deposits/investment for a period over one year. When the matter travelled up to the Tribunal for balance deduction, the Ld. Co-ordinate (SMC) Bench vide its order dt. 09/11/2022 in ITA 462-465/PAN/2018 remitted the issue back for verification to the file of Ld. CIT(A), the status of which is unknown.

2.3 The assessee assailed the order of penalty in first appeal on the strength of relief granted to it in quantum appeal proceedings, however it could hardly inspire the Ld. NFAC who dismissed the appeal of the assessee reiterating the findings of Ld. AO from assessment order.



2.4 Saddled with the unjust penalty, the assessee came in present appeal challenging the impugned order on a solitary ground that, the Ld. NFAC erred in law in confirming the order of penalty-imposed u/s 271(1)(c) of the Act by the Ld. NFAC.

3. We have heard the rival party's submissions on legal ground including the bonafied belief of the appellant while filing the return of income and subject to rule 18 of ITAT Rules, 1963 perused the material placed on records and considered the facts in the light of settled position of law and judicial precedents relied upon which are forewarned to the parties present.

4. The only dispute and the strength upon which the Revenue imposed & sustained the penalty u/s 271(1)(c) of the Act revolves around '*furnishing in accurate particulars of income*' in the return of income filed by the assessee. In view therefore, the rival parties restricted their respective arguments and counter arguments on the legal ground raised in the present appeal where we



found strength in counter argument of the Ld. DR Mr Deshmukh that, the appellant could hardly lay any constitutional/registration documents to establish that it is a 'co-operative society' and not a 'Trust' as deciphered from PAN allotted to it by the Revenue with which it assessed to tax for the year under consideration. Further the appellant could hardly dismantle Revenue's stands that mis-intention or ill-intention in claiming a status as 'co-operative society' as against 'Trust' indicated by PAN is apparent, admitted and need not to be proved further for levying penalty in view of the Hon'ble Apex Court's decision in '*UOI Vs Dharamendra Textile Processors*' [2008, 13 SCC 369 (SC)]. *Per contra*, relying on the decision of Ld. Co-ordinate bench in 'ITA No 1626/Ban/2024 dt. 29/11/2024' the appellant tried to displace Revenue's right to impose penalty on twofold contentions; (i) the claim for deduction u/s 80P(2) is highly debatable and (ii) the appellant was under bonafide belief while furnishing the particulars in the return of income filed by it.



5. Since the imposition of penalty founded solitarily on the basis of denial of appellant's personal-tax-status as defined by section 2(31) of the Act and not over deductibility, therefore the first contention of 'debatability' could hardly inspire any confidence to us. Insofar as bonafide belief is concerned, the apparent person-status is clearly visible from the PAN allotted to it as against the status claimed in its return of income. Therefore the claim of the Ld. AR that, there was a bonafide belief in claiming the status as 'co-operative society' is *ispo-fact* is incorrect. For the reasons appellant's twin contentions rejected at the threshold.

6. However, the validity of impugned penalty has to be vouched on the basis of assessment and its finality. And in doing so we find that, by return of income and submissions filed during the course of original assessment proceedings the appellant furnished certain key information to the Revenue that; (i) it is a co-operative society within the meaning of section 2(19) of



the Act, and (ii) was in receipt of interest income on its bank deposits/investments (iii) the net interest income derived/received by it on such investments for the year under consideration was eligible for deduction and thus claimed as such u/s 80P(2) of the Act. As against former threefold information, the Ld. AO found that, the appellant assessee was not a co-operative society but a 'primary co-operative bank' hence not eligible for claim for deduction u/s 80P(2) in view of section 80P(4) r.w.s. r.w.s. 2(24)(via) of the Act. The denial of claim for 80P(2) deduction in limine was exclusively founded on the basis of rejection of appellant's status as '*co-operative society*' in view of section 2(19) r.w.s. 2(31) of the Act.

7. We thus note that, the claim of the appellant made in the return of income as '**co-operative society**' in view of the Revenue constituted as '*furnishing of inaccurate particulars of income*' which in turn sanctioned initiation & consequential imposition of impugned penalty equal to 100% of tax on the amount of claim for deduction denied.



8. The findings of the Ld. AO that the appellant was a 'primary co-operative bank' hence ineligible to claim deduction in view of section 80P(4) r.w.s. r.w.s. 2(24)(via) of the Act, has been squarely overturned vide para 9 (placed at pg 4/7) by the Ld. CIT(A) in its order dt. 30/06/2018. By the said order, the Ld. CIT(A) *per-se* reinstated the appellant's status as 'co-operative society' [on the basis of para 3 of assessment order] and thus held the appellant as eligible for deduction u/s 80P(2) of the Act. Thus in quantum appeal the Ld. CIT(A) already discarded the very basis upon which the penalty proceedings u/s 271(1)(c) were initiated by the Revenue. However, turning blind eye to the former quantum adjudication, the Ld. NFeAC advanced & imposed the penalty which in first appeal confirmed by the Ld. NFAC.

9. Since, the Revenue is not appeal against the order the Ld. CIT(A) dt. 30/06/2018 passed in quantum appeal whereby the appellant was held as 'co-operative society', therefore, at least for the year under consideration the



issue relating to 'such-status of the appellant' has *de-facto* reached the finality. In view thereof, Ld. DR's candid attempt to re-challenge the status on the basis of PAN not only lead to improving the case but falls much beyond the scope of present appeal, therefore impermissible in law. The Revenue however may in law is free to untie the reversal assessment findings.

10. The furnishing of information that, the appellant is a '*co-operative society*' by virtue of first appellate quantum order dt. 30/06/2018 for the year under consideration has been accepted as correct by the Revenue and as such attained the finality as on this date, therefore the act of furnishing such information by the appellant has *de-facto* ceased to be '*furnishing of inaccurate particulars*' thus giving no-power or sanction to invoke & impose penalty u/s 271(1)(c) of the Act. For said reasons, we set-aside impugned order of Ld. NFAC and delete the impugned penalty in its entirety. The solitary ground thus stands partly allowed.



11. Before parting, it is apt to note that, the possibility of presence of doubt in the mind of Ld. AO while deciding status of the appellant as to either 'co-operative society' or as 'Trust' [As per PAN data] cannot be completely ruled out. Taking a benefit of doubt the Ld. AO framed the assessment. This finds fortified by the Hon'ble Apex Court in 'CCE Vs Calcutta Springs' [2008, 229 ELT 161(SC)] which has been followed subsequently in landmark judgement 'CoC Vs Dilip Kumar & Co' [2018, 9 SCC 1 (SC)]. However, in respect of penalty in fiscal laws the principle followed is akin to principle adhered in criminal cases. That is to say the benefit of doubt is more easily given to the assessee, and this proposition found well expounded in 'V V Iyer Vs CC' [1999, 110 ELT 414 (SC)].

12. **The appeal in result stands ALLOWED.**

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned herein before.

-S/d-

PAVAN KUMAR GADALE
JUDICIAL MEMBER

Panaji/Dt: 03rd, June 2025.

Copy of the Order forwarded to :

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|-------------------|-----------------------------------|-------------------------|
| 1. The Appellant. | 2. The Respondent. | 3. The CIT(A) Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Panaji | 6. Guard File |

-S/d-

G. D. PADMAHALI
ACCOUNTANT MEMBER

By Order,
Sr. Private Secretary / AR ITAT, Panaji.