

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C', BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.262 (Bang) 2012
Assessment year : 2008-09)**

The Asst. Commissioner of Income Tax,
Circle-1,
Davangere

Appellant

Vs

M/s Chitradurga District Central Co-Operative Bank Ltd.
D.C Office Circle,
Chitradurga-577 501

Respondent

And

**ITA No.339(Bang)/2014
(Assessment year : 2008-09)
(By Assessee)**

Revenue by : Shri M.K.Biju, JCIT

Assessee by : Smt. Sheetal Borkar, Advocate

Date of hearing : 10-01-2017

Date of pronouncement : 25-01-2017

ORDER

PER SHRI A.K.GARODIA, AM

The appeal filed by the revenue for assessment year 2008-09 is in quantum proceedings and the appeal filed by the assessee for the same assessment year is in respect of penalty imposed by the AO u/s 271(1) c) of the IT Act, 1961 for the addition upheld by the ld. CIT(A). Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the revenue in ITA No.262(B)/2012 are as under;

“1. The order of the CIT(A), Hubli, is bad in law.

2. The order of the ld. CIT(A) Hubli, is opposed to law and not on the facts and circumstances of the case.

3. The order of the ld. CIT(A), Hubli, is factually incorrect insofar as the para-2 on page-4 records hearing the AO when such thing happened

4. The ld. CIT(A), Hubli, erred in deleting the addition of Rs.88,60,000/- made on account of accrued interest on loans and advances.

5. The ld. CIT(A), Hubli has not appreciated the amendment to Sec.145 made with effect from 01/04/1997 and its implication in assessing the accrued interest on loans and advances.

6. The ld. CIT(A), Hubli, erred in deleting the addition of Rs.12,50,324/- in respect of interest receivable from State Government.

7. The ld. CIT(A) Hubli ignored the mandatory requirement of RBI guidelines according to which the banks ought to comply with and follow mercantile system of accounting.

8. For these and other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), Hubli, may please be reversed and that of the AO be restored.

9. The appellant craves leave to add, alter, amend or delete any other grounds on or before the hearing of appeals.

3. Similarly, assessee has raised the following grounds in its appeal No.339(B)/2014:-

“1. On the facts and in the circumstances, the Commissioner of Income-tax (Appeals) erred in passing the order in the manner he did.

2. The Commissioner (A) ought to have appreciated that all the additions made by the Assessing Officer were in fact based on the return of income where the Assessing Officer chose to disallow and made addition and were not detected by the AO to hold as concealed by the, Appellant.

3. Without prejudice, the Commissioner (A) ought to have appreciated that it is the settled position of law that even sustenance of additions would not ipso-facto amount to concealment of income or furnishing of inaccurate particulars within the mischief of Sec.271 (1) (c) of the Act.

4. Without prejudice, the Commissioner (A) ought to have appreciated that with regard to the

provision for NPA, the Commissioner (A) had directed the AO to verify the calculation of advances made by the Rural Branches, by giving an opportunity to the assessee, calculate and allow accordingly and therefore, the Commissioner (A) was in error to say that. the addition was confirmed by the appellate authority.

5. Without prejudice, the Commissioner (A) ought to have appreciated that the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd., (322 ITR 158) was squarely applicable to the case and ought to have deleted the penalty levied by the Assessing Officer.

6. Without prejudice, the penalty levied is excessive, arbitrary and unreasonable and ought to be deleted in toto.

7. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed”.

4. First we take up the appeal of the revenue in quantum proceedings. It is submitted by the ld. DR of the revenue that there are two issues involved in this appeal of the revenue. He submitted that the first issue is regarding deletion of the addition

of Rs.88.60 lakhs made by the AO on account of accrued interest on loans and advances. He submitted that on pages-3 & 4 of his order, the Id. CIT(A) has re-produced the submissions made before him and thereafter, he decided the issue by following a judgment of the Hon'ble Apex Court rendered in the case of UCO Bank Vs CIT reported in 237 ITR 889 without giving finding on facts as to whether this advance on which interest was not accounted for by the assessee are NPA or not. He submitted that under these facts, the order of the Id.CIT(A) should be reversed and that of the AO should be restored. He further submitted that the second issue involved is about deletion of addition made by the AO of Rs.12,50,324/ in respect of interest receivable from State Government. He submitted that on this issue also, the Id.CIT(A) has reproduced on page-3 & 4 of his order the submission of the assessee made before him and thereafter, he has decided the issue in favour of the assessee on page-5 of his order without giving a finding as to whether and how the submissions made before him by the assessee are correct. He submitted that in the absence of finding of fact by the Id.CIT(A) on this issue also, the order of Id. CIT(A) should be reversed and that of the AO should be restored.

5. As against this, the ld. AR of the assessee supported the order of the ld. CIT(A) on both these issues. She also submitted that even if it is held that the ld.CIT(A) should have given some factual findings also, the matter should be restored back to his file for a fresh decision.

6. We have considered rival submissions. We find force in the submissions of the ld. DR of the revenue to this extent that no factual finding has been given by the ld. CIT(A) on both these issues and therefore, his order is not sustainable but we feel that in the facts of the present case, the matter should go back to the file of CIT (A) for a fresh decision. Accordingly, we set aside the order of CIT (A) and restore the matter back to his file for a fresh decision with the direction that he should give categorical findings on facts and decide both issues after providing adequate opportunity of being heard to both sides.

7. In the result, the appeal of the revenue is allowed for statistical purposes.

8. Now we take up the appeal filed by the assessee in course of penalty proceedings. It is submitted by the ld. AR of the assessee that notice for imposing penalty was issued by the AO on 29-12-2010 and copy of the notice has been submitted before the

Tribunal as per which it is seen that the AO has not specified the charges against the assessee as to whether the assessee has concealed the particulars of income or has furnished inaccurate particulars of income. He submitted under these facts, the penalty order passed by the AO is not valid in law. In support of this contention, he has placed reliance on the judgment of the Hon'ble Karnataka High Court rendered in the case of CIT Vs Manjunatha Cotton & Ginning Factory as reported in 359 ITR 563(Kar.).

9. The ld. DR of the revenue supported the orders of the authorities below.

10. We have considered the rival submissions. We find that it was held by the Hon'ble Karnataka High Court in the case cited by the ld. AR as noted above that the AO should specify the charge in the notice issued by him for penalty as to whether the assessee has concealed particulars of income or furnished inaccurate particulars of income and sending printed form without specifying the charge would not satisfy the requirement of law and under these facts, the penalty order is not sustainable in law. In the present case also, as per notice issued by the AO for imposition of penalty u/s 271(1)(c) of the IT Act, 1961, he has not specified the charge as to whether the assessee is guilty of concealment of

income or furnishing of inaccurate particulars of income and therefore, by respectfully following this judgment of the Hon'ble Karnataka High Court, we hold that this penalty order passed by the AO in the present case is bad in law and hence, the same is quashed.

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

12. In the combined result, the appeal of the revenue is allowed for statistical purposes and the appeal of the assessee is allowed.

Order pronounced in the open court on the date mentioned on the caption page.

(VIJAY PAL RAO)
JUDICIAL MEMBER

Place: Bangalore:

D a t e d : .01.2017

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

(A.K. GARODIA)
ACCOUNTANT MEMBER

By order

AR, ITAT, Bangalore

1. श्रुतलेख की तारीख.....
DATE OF DICTATION.....
2. तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING
MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व. निजी सचिव/निजी सचिव के पास वापस आए
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER
FOR PRONOUNCEMENT.....
5. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
- 6 आदेश अपलोड करने की तिथि
DATE OF UPLOADING THE ORDER ON WEBSITE.....
7. अगर अपलोड नहीं किया तो, उसका कारण
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
8. बेंच लिपिक के पास फाइल जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
9. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
10. फाइल मुख्य लिपिक के पास जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE HEAD CLERK.....
11. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR
SIGNATURE ON THE ORDER.....
12. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH
OF THE TRIBUNAL ORDER.....
13. आदेश की प्रेषण की तिथि
DATE OF DESPATCH OF ORDER.....