

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI  
BEFORE  
SHRI L.P.SAHU, ACCOUNTANT MEMBER  
AND  
SMT. BEENA A. PILLAI, JUDICIAL MEMBER  
ITA No. 204/Del/2014**

The Mantola Cooperative  
Thrift & Credit Society Ltd.,  
541, Mantola Pahae Ganj,  
New Delhi  
GIR / PAN :AAAJT1976A  
(Appellant)

Vs. ITO, Ward 38(4),  
New Delhi

(Respondent)

Appellant by : Shri Gaurav Jain, Adv.  
Shri Bhavita Kumar, Adv.  
Respondent by : Shri Rajesd Kumar, Sr. DR

Date of hearing: 29.11.2016

Date of Pronouncement: 03.01.2017

**ORDER**

**PER BEENA A. PILLAI, JM:**

The assessee is a co-operative society registered under the Delhi co-operative societies act, engaged in the business of dealing with its members whereby it mobilises thrift money from its members and provide credit facility to them. For assessment year 2008-09, the assessee filed its return of income declaring gross total income under the heading business and profession at Rs.1, 44,04060/-, and claimed deduction under section 80P (2)(a) (i) of the Income tax Act 1961, on the entire income, thereby declaring total income at NIL. Assessment was completed by the Ld. AO under section 143 (3) whereby he treated the interest on FDR with banks as income from

other sources, not eligible for deduction under section 80P(2) (a)(i). On an appeal before Id.CIT(A), the deduction under section 80P (2) (a)(i) was allowed, which was reversed by this Tribunal subsequently.

Aggrieved by the order of this Tribunal assessee filed appeal before Hon'ble jurisdictional High Court. Hon'ble Delhi High Court vide order dated 27/08/2014 in ITA No. 569/2013 held as under:-

*"11.At this stage, Ld. counsel for the appellant-SEC has pointed out that the Commissioner of income tax (appeals) had decided the issue in their section 57 (3) that is availability of expenditure having exes with earning of the said income was not examined. This ground/argument was an alternative. Ld. Counsel for the revenue submits that this question may be remitted to the Ld. Commissioner of income tax (appeal) as he had not decided the said question having allowed the appeal in entirety holding that the entire interest was exempt under this section 80P. We appreciate the stand taken by the Ld. counsel for the revenue and accordingly the matter is remitted on the said aspect to the Commissioner of income tax (appeals) for decision.*

*12.Similarly, with regard to the claim of deduction under section 80 P (2) (i), we find that there was no discussion on finding by the Commissioner of income tax (appeals), though this ground/issue was raised. This has happened because the Commissioner of income tax (appeals), as noted above, had granted exemption to the entire income earned by the appellant-soc under section 80P(2)(i)(a).*

*Learning counsel for the respondent-revenue submits that this issue would be examined by the Commissioner of income tax (appeal) on merits. We take this same statement on record.”*

Accordingly as per the directions of the Hon’ble Delhi High Court, issues which were not adjudicated upon by Ld. CIT (A) were sent back for re-adjudication, as under:

A. Whether the assessee is eligible for deduction under section 80 P (2) (D) relating to income derived from investment in other co-operative societies.

B. The availability of deduction of expenses under section 57 regarding income from other sources.

The Ld. CIT(A) disallowed the entire claim of the assessee against which assessee preferred appeal before this Tribunal. Before The Tribunal, assessee came into appeal for assessment years 2004-05 to 2007-08, 2009-10, 2010-11 as well. This Tribunal after considering the various submissions on law as well as on merits and held as under:

*It is pertinent to note that during the concerned years under consideration the assessee had deposits with co-operative banks and commercial banks, as provided in the chart submitted before us. It is observed that the gross income earned by the assessee comprises of 3 components which are as under:*

*i) interest income earned from investment with co-operative banks*

*ii) interest income earned from investment with commercial banks  
and,*

*iii) interest paid on deposits to members.*

*And as there is substantial amount of interest earned from deposits with co-operative banks, the assessee would be eligible for deduction under section 80P(2)(d).*

*We are therefore inclined to allow the interest earned by the assessee from the deposits made with co-operative society to be eligible for deduction under section 80P of the Act. Accordingly ground No. 3 for assessment year 2004-05 to 2007-08, 2009-10, 2010-11 and ground No. 1 for assessment year 2008-09 stands allowed.”*

In the mean time Ld.AO initiated penalty proceedings for concealment and furnishing of inaccurate particulars of income. The assessee was asked to show cause wide notice dated 21/01/2013 as to why penalty under section 271 (1) (c ) may not be imposed for furnishing of inaccurate particulars of income. It was submitted by the assessee that all the particulars of income has been duly disclosed by the assessee in its books of accounts and the addition is made mainly on account of into petition of law on the basis of the facts available on record. It was submitted that the disallowance made is a debatable issue and therefore there is no failure to offer an explanation by the assessee. The Ld. AO rejected the contentions and submissions raised by the assessee and levied a penalty of Rs. 44,22,240/-under section 271 (1) (c ) of the Act.

Aggrieved by the order of Ld.AO assessee preferred an appeal before Ld. CIT(A) confirmed the penalty levied by the assessing officer

under section 271 (1) (c) of the Act. Aggrieved by the order of Ld. CIT (A) assessee is in appeal before us now.

It has been submitted by Ld.AR that assessee has not furnished inaccurate particulars and the claim of the assessee has been partly allowed by this Tribunal in the quantum appeal. He further submitted that the allowability of the claim under section 80 P of the act was debatable in nature and the disallowance was made on bona fides and is of opinion between the assessee and the Ld. AO. He submitted that the claim of deduction under section 80 P was bona fides supported by proper disclosures made in the return of income accompanying by documents and therefore no penalty under section 271 (1) (c) could be levied here is submitted that assessee had fully disclosed all the material facts for the purposes of consideration of the claim and therefore the penalty could not be imposed for alleged furnishing of inaccurate particulars of income. He submitted that the claim under section 80 P made by the assessee was under a presumption that benefit under section 80 P (1) has been taken away from 01/04/2007 from co-operative banks, whereas the assessee was a co-operative society and therefore was under bona fides belief that assessee was eligible for deduction under this section. He also submitted that the claim made by the assessee under section 80 P was based on various decisions of Hon'ble Karnataka High Court. He thus submitted that penalty could not be levied on bona fides wrong clay made by the assessee. Ld.AR further placed reliance on various judgments of Hon'ble Supreme Court as well as jurisdictional High Court where it has

been held that penalty could not be levied on bona fides wrong claims. Some of the judgments plays in the paper book by the Ld. AI are as under:

- a) Cement Marketing Company of India Ltd vs. ACIT reported in 124 ITR 15 (SC);
- b) CIT vs. AT & T communication service India Pvt. Ltd., reported in 342 ITR 257 (Del);
- c) CIT vs. Societex reported in 259 CTR 325 (Del);
- d) CIT vs. Tudor Knitting works Pvt. Ltd., reported in 366 ITR 236 (P&H);

On the contrary the Ld. DR relied upon the orders passed by the authorities below and submitted that assessee had wrongly claimed deduction under section 80 P of the Act and therefore the assessing officer was justified in levying penalty under section 271 (1) (c ) of the Act.

We have perused the facts of the case in the light of the relevant records placed before us and the submissions advanced by both the parties.

It is a case where penalty has been levied by the assessing officer on a issue in respect of which Hon'ble Delhi High Court in assessee's own case for the relevant assessment year under consideration had sent back the issue for re-adjudication before Ld. CIT (A), by framing specific question of law in respect of the deduction claimed by the assessee. When the Hon'ble High Court has framed substantial question of law, it becomes apparent that the addition is certainly debatable. The framing of a substantial

question of law by Hon'ble High Court lends credence to the bona fides of the assessee in claiming deduction. Once it turns out that the claim of assessee could have been considered for deduction as per instructions, which is not completely debarred at all, the mere fact of confirmation of the disallowance of deduction would not *per se* lead to imposition of penalty. Since the addition in respect of which penalty has been levied by the authorities below has been held by the Hon'ble High Court to be involving a substantial question of law, in our considered opinion, penalty is not exigible under this section. We therefore are inclined to delete the penalty.

In the result appeal filed by the assessee stands allowed

Order pronounced in open court on 03<sup>rd</sup> January, 2017.

Sd/-  
(L.P.SAHU)  
ACCOUNTANT MEMBER

Date: 03.01.2017

SP.

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

Sd/-  
(BEENA A. PILLAI)  
JUDICIAL MEMBER

By Order  
(ITAT, New Delhi)