

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE JUSTICE P.P. BHATT, HON'BLE PRESIDENT
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING
ITA No.725/Ind/2017
Assessment Year: 2009-10

DCIT 4(1), Bhopal	Vs.	M/s. Vidisha Bhopal Kshetriya Gramin Bank, Modh Bhawan, Club Road, Vidisha (M.P)
(Revenue)		(Appellant)
PAN No.AAACV5199E		

Revenue by	Shri Harshit Bari, Sr.DR
Appellant by	Shri Anil Khabya, CA
Date of Hearing	03.12.2020
Date of Pronouncement	07.01.2021

ORDER

PER MANISH BORAD, AM.

The above captioned appeal filed at the instance of revenue pertaining to Assessment Year 2009-10 is directed against the order of Commissioner of Income Tax (Appeals)-2 (in short 'Ld.CIT'], Bhopal dated 22.09.2017 which is arising out of the order u/s 271(1)(c) of the Income Tax Act 1961(In short the 'Act') dated 27.03.2014 framed by ACIT-3(1), Bhopal.

2. Revenue has raised following grounds of appeal :-

"on the facts and in the circumstances of the case and in law, the CIT(A) has erred in:

1) holding that there is no finding on record that any details supplied by the appellant in its return of income for the year under consideration are found to be incorrect or false and therefore, there is no question of levying penalty u/s 271(1)(c) of the Income Tax Act, 1961 when w.e.f. 01.04.2007, the assessee was not eligible for deduction u/s 80P of the Income Tax Act, 1961 despite the fact that the assessee has been making incorrect claim of deduction u/s 80P of the IT Act thus furnishing of inaccurate particulars of income.

2) Holding that there is no finding on record that any details supplied by the appellant in its return of income for the year under consideration are found to be incorrect or false and therefore, there is no question of levying penalty u/s 271(1)(c) when assessee was claiming deduction u/s 80P despite the fact that in its own case deduction was disallowed in A.Y 2007-08 and same was disallowed by Hon'ble ITAT."

3. Brief facts as culled out from the records are that the assessee is a Regional Rural Bank carrying out banking activities. NIL income declared in the return for Assessment Year 2009-10 filed on 24.09.2009 after claiming deduction u/s 80P of the Act. Ld. A.O completed the assessment proceedings u/s 143(3) of the Act on 20.12.2011 after disallowing the deduction u/s 80P of the Act. The disallowance was upheld by Ld. CIT(A)-2, Bhopal. Penalty proceedings u/s 271(1)(c) of the Act were initiated by Ld. A.O. Reply filed by the appellant in response to show cause notice could not satisfy Ld. A.O and he imposed penalty u/s 271(1)(c) of the Act at

Rs.1.80 crores for furnishing inaccurate particulars of income. Aggrieved assessee filed appeal before Ld. CIT(A) against imposition of penalty u/s 271(1)(c) of the Act and succeeded as Ld. CIT (A) deleted the penalty observing as follows:-

“7. The facts of the case in present appeal are identical to the facts in the case of the appellant for A.Y. 2011-12. The appellant has also placed on record that the Hon'ble High Court of Madhya Pradesh, Principal Seat at Jabalpur has admitted the appeal of the appellant on these issues as substantial question of law for the A.Y. 2007-08 and 2008-09. Appellant has also relied on Hon'ble I.T.A.T., Indore Bench order in ITA No. 502 to 505/Ind/2014 for A.Y. 2005-06 to 2008-09 dated 01.12.2015 in the case of ACIT-3(1), Bhopal Vs. M/s R.K. Gupta Contractors & Engineers Pvt. Ltd Bhopal, wherein the Hon'ble I.T.A.T. has stated that “we are taking a consistent view that when there is an admission of High Court regarding penalty, the penalty cannot be imposed”. Therefore, respectfully following the order of the Ld. CIT(A)-2, Bhopal and the decision of the Hon'ble I.T.A.T., Indore, the penalty order u/s 271(1)(c) for the assessment year 2009-10 in the case of the appellant is hereby cancelled. The grounds of appeal with regard to the validity and jurisdiction of the A.O in levying the impugned penalty do not require adjudication as the penalty itself has been deleted.”

4. Now the Revenue is in appeal before the Tribunal.
5. At the outset Ld. Counsel for the assessee relying on the finding of Ld. CIT(A) submitted that the issue raised in this appeal is squarely covered in favour of the assessee by the decision of Co-ordinate Bench, Indore in assessee's own case for Assessment Year

2011-12 vide *ITA No.597/Ind/2015 order dated 11.08.2017* wherein the Tribunal has held that “since the Hon’ble jurisdictional High Court has admitted the appeal of the assessee on the similar issue of levy of penalty on disallowance of deduction u/s 80P of the Act as substantial question of law for Assessment Year 2007-08 and 2008-09, penalty levied u/s 271(1)(c) of the Act deserves to be deleted”.

6. Per contra Ld. Departmental Representative vehemently argued supported the order of Ld. A.O but could not controvert the submission made by the Ld. Counsel for the assessee.

7. We have heard rival contentions and perused the records placed before us. Revenue’s sole grievance is against the deletion of penalty at Rs. 1,80,00,000/- by Ld. CIT(A) which was levied by Ld. A.O u/s 271(1)(c) of the Act on the disallowance of deduction u/s 80P of the Act. We observe that similar issue under identical facts has come up before this Tribunal in assessee’s own case for Assessment Year 2011-12 vide *ITA No.597/Ind/2015* and revenue’s appeal was dismissed and the finding of Ld. CIT(A) deleting the penalty levied u/s 271(1)(c) of the Act was confirmed by this Tribunal observing as follows:-

“3. We have heard both the parties and also perused the relevant material placed on the record of the Tribunal, inter alia paper book filed by the assessee. The Ld. CIT-DR, submitted that the Ld. CIT(A) was not correct in holding that there is no finding on record that any detailed supply by the appellant in its return of income are found to be incorrect or false and therefore, no question levying the penalty u/s 271(1)(c) of the Income Tax Act 1961 (for short ‘the Act’) when w.e.f. 01.04.2007 the assessee was not eligible for deduction u/s 80P of the Act, despite the same, the assessee has been making incorrect claim of deduction, thus, furnishing of inaccurate particulars of income.

4. The Ld. CIT-DR vehemently pointed out that the first appellate authority was also not correct in holding that there is no finding on record that any detailed supply by the appellant in its return of income was found incorrect or false specifically when the assessee was claiming deduction u/s 80P of the Act despite the fact that in its own case deduction was disallowed in A.Y.2007-08 and disallowance was upheld by the Tribunal.

5.The Ld. CIT-DR finally submitted that ld. CIT(A) has granted relief without any basis, therefore, impugned order may be set aside by restoring penalty order of the AO.

6. Placing to the above, strongly supporting first appellate order, the Assessee’s Representative (AR) submitted that the provisions of part section V of Banking Regulation Act are not applicable to the present assessee as the appellant is not covered under the definition of “Cooperative Banks” and hence provisions of Section 80P(4) excluding the benefit of Section 80P of the Act only to certain Cooperative Bank and is not applicable to the assessee. The ld. AR submitted that the assessee is entitled to claim benefit of section 80P of the Act which allows us benefit of deduction of entire profit earned from banking activities and hence, the assessee has made a bonafide legal claim and has not concealed or furnished inaccurate particulars of income. The Ld. Counsel submitted that

the appeal against the order of the Tribunal which uphold disallowance for earlier years have been filed before Hon'ble High Court and for A.Y. 2011-12. The I.T.A.T. has passed order u/s 158A of the Act, therefore, same has not attained finality and thus penalty cannot be levied. The Ld. AR further pointed out that even in the assessment order dated 13.12.2013 the AO himself has mentioned status of the assessee as deemed society under the Regional Rural Bank Act, 1976 and thus, it is not a Cooperative Bank on which provisions of section 80P(4) of the Act applies. The Ld. AR finally submitted as per ratio of the decision of Hon'ble High Court dated 11.01.2017 in I.T.A.T. No.89/2016 and others appeals in the case of Pr. CIT vs. M/s. R.K. Gupta Contractors & Engineers Pvt. Ltd. till decision of appeal by the High court bona fide of the assessee in claiming deduction cannot be disputed and penalty imposed should be cancelled.

7. On careful consideration of our rival submissions, at the very outset, from the copy of the order of I.T.A.T., Indore dated 27.10.2015 in ITA No.511/In/2014 for A.Y. 2011-12 in assessee's own case, we observe that the Tribunal disposed of the appeal of the assessee on the basis of declaration made by the appellant-assessee u/s 158A(1) of the Act to avoid repetitive appeals on the identical question of law which is pending before the Hon'ble High Court for the earlier years. Thus, it is discernable that on the issue of eligible of deduction u/s 80P of the Act for A.Y. 2007-08 is pending before the Hon'ble' High Court of Madhya Pradesh wherein substantial question of law has been framed. For present A.Y. 2011-12 the Tribunal has passed an order dismissing the appeal of the assessee u/s 158A(1) of the Act by following it earlier year for A.Y. 2007-08 dated 18.06.2012. Therefore, we have inclined to hold that as per ratio of the judgment of jurisdictional High court of Madhya Pradesh in the case of Pr. CIT vs. R.K. Gupta Contractors & Engineers Pvt. Ltd.(supra), till decision of appeal by the High court bona fide of the assessee in claiming the deduction cannot be disputed and therefore, the penalty imposed should

be cancelled. In this situation, we are inclined to hold that since appeal of the assessee on this issue which is pending for decision before Hon'ble High Court till disposal of such appeal bona fide in claiming deduction u/s. 80P of the Act cannot be ruled out and hence penalty u/s 271(1)(c) of the Act cannot be sustained and only on this count penalty deserves to be deleted.”

8. We find that the issue raised in the instant appeal is squarely covered by the decision of this Co-ordinate Bench (*supra*) in assessee's own case for Assessment Year 2011-12 and Ld. Departmental Representative failed to bring on record any other contrary judgments in its favour. We therefore respectfully following the decision of this Tribunal in assessee's own case for Assessment Year 2011-12, find no inconsistency in the finding of Ld. CIT(A) deleting the penalty levied u/s 271(1)(c) of the Act. We accordingly order so.

9. In the result Revenue's appeal is dismissed.

The order pronounced in the open Court on 07.01.2021.

Sd/-

Sd/-

(P.P. BHATT)
PRESIDENT

(MANISH BORAD)
ACCOUNTANT MEMBER

नांक /Dated : 07th January, 2021

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

ITA No.725/Ind/2017
Vidisha Bhopal Kshetriya Gramin Bank

By Order,
Asstt.Registrar, I.T.A.T., Indore