IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2600/PUN/2017
निर्धारण वर्ष / Assessment Year: 2009-10

ITO, Ward- 1, Satara.	Vs.	Karad Janata Sahakari Bank Ltd., A/p. 100/101, Shivaji Nagar, Karad, Tal. Karad, Dist. Satara-415110. PAN : AAAAT7863R
Appellant		Respondent

Revenue by	:	Shri M. G. Jasnani
Assessee by	:	Smt. Deepa Khare
Date of hearing	:	18.01.2022
Date of pronouncement	:	18.01.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of ld. Commissioner of Income Tax (Appeals)- 4, Pune ['CIT(A)' for short] dated 08.05.2017 for the assessment year 2009-10.

2. The Revenue raised the following grounds of appeal :-

"1. On the facts and in the circumstances of the case, the Ld. C I T (A) has erred in deleting the penalty of Rs. 59,00,884/- levied u/s. 271(1)(c) of the Act holding that the AO was not able to prove that is a fit case for imposition of penalty either under the main part of section u/s. 271(1)(c) or under the deeming provisions of explanation 1 to section 271(1)(c) of the Act.

2. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the penalty without appreciating the fact that the assessee has availed higher claim of deduction u/s 36(1)(viia) in the computation of income than as admissible under the income tax act and when the onus of proving 'mens-rea' is not on the department/AO. Ignoring the decision of Hon'ble Supreme Court in the case of K. P. Madhusudan (118 Taxman 324), MAK Data (P) Ltd., vs. CIT (358 ITR 573) and union of India vs. Dharmendra Textile processor's (174 Taxman 571) as well as express provisions of explanation 1 to section 271(1)(c) of the Act.

3. On the facts and in the circumstances of the case the Ld. CIT (A) has erred in relying on the decision of Hon'ble Supreme Court in the case of Reliance Petro Products based on entirely different facts as it pertains to penalty on disallowance of interest u/s 14A which was paid for loan incurred under business policies and that too for A.Y. 2001-02 and there was no dividend income and provisions of section 14A were inserted by finance Act, 2001 w. e .f. 01/04/1962, whereas in extant case disallowance relates to wrongful deduction claim which was confirmed by the Hon'ble ITAT.

4. For these and such other grounds as may be urged at the time of hearing, the order of the ld.CIT(A) may be vacated and that of the Assessing Officer be restored.

5. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal during the course of the appellate proceedings before the Hon'ble Tribunal."

3. Briefly, the facts of the case are as under :

The respondent-assessee is a cooperative bank engaged in the banking business. The return of income for the assessment year 2009-10 was filed on 26.09.2009 disclosing total income of Rs.Nil. Against the said return of income, the assessment was completed by the Tax Recovery Officer, Satara ('the Assessing Officer') vide order dated 29.12.2011 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.6,29,04,510/-. While doing so, the Assessing Officer made several disallowances. One of such disallowance relates to the disallowance of Rs.1,96,69,614/- u/s

36(1)(viia) of the Act, the Assessing Officer allowed the claim for deduction u/s 36(1)(viia) to the extent of provision actually created of Rs.45,00,000/- as against total claim of deduction of Rs.2,41,69,614/- and the balance of Rs.1,96,69,614/- was disallowed as no provision was created in the books of account.

4. Being aggrieved by the above disallowance, an appeal was filed before the ld. CIT(A), who had confirmed the action of the Assessing Officer vide order dated 30.08.2012. Even on further appeal before the Tribunal, the addition was confirmed following its earlier year's decision in assessee's own case. Subsequently, the Assessing Officer had levied the penalty u/s 271(1)(c) of the Act vide order dated 01.09.2016 holding that the respondent-assessee guilty of furnishing of inaccurate particulars of income.

5. Being aggrieved by the order of penalty u/s 271(1)(c), an appeal was preferred before the ld. CIT(A), who vide impugned order held that the penalty u/s 271(1)(c) is not imposable by holding that the mere disallowance of claim for deduction does not entail levy of penalty u/s 271(1)(c) placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd., 322 ITR 158 (SC).

6. Being aggrieved by the above decision of the ld. CIT(A), the Revenue is before us in the present appeal.

7. The ld. CIT-DR contended that the very fact that the assessee claimed an excess claim of deduction u/s 36(1)(viia) of the Act in the return of income establishes the factor of furnishing inaccurate particulars of income and the ld. CIT(A) ought not to have deleted the penalty.

8. On the other hand, ld. AR, Smt. Deepa Khare submits that the mere disallowance of claim does not amount to furnishing of inaccurate particulars of income placed reliance on the order of the ld. CIT(A).

9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the levy of penalty u/s 271(1)(c) of the Act. The Assessing Officer disallowed the excess claim of deduction u/s 36(1)(viia) on the ground that the assessee had not created the requisite provision and levied penalty u/s 271(1)(c) by holding that the respondent-assessee is guilty of furnishing of inaccurate particulars of income. On perusal of the assessment order, it will clearly suggest that, it is a case of mere disallowance of excess claim for want of creation of requisite provision which, in our considered opinion, does not tantamount to

furnishing inaccurate particulars of income, nor can it be said that it is false claim. Therefore, the ratio of decision of the Hon'ble Apex Court in the case of Reliance Petro Products Pvt. Ltd. (supra) is squarely applicable to the facts of the present case. Further, on mere perusal of the assessment order as well as the penalty order, we do not find any finding of the Assessing Officer as to how in what manner the assessee had furnished inaccurate particulars of income leading to the subject addition to the returned income. In the absence of this finding, the order of penalty cannot be sustained in the eyes of law as held by the following catena of decisions :-

i) CIT Vs. Balbir Singh (2008) 304 ITR 125.

ii) National Textiles Vs. CIT (2001) 249 ITR 124.

iii) Nainu Mal Het Chand Vs. CIT (2007) 294 ITR 185.

iv) CIT Vs. Super Metal Re-Rollers Pvt. Ltd. (2004) 265 ITR 82.

v) Diwas Enterprise Vs. CIT (2000) 246 ITR 571 Delhi.

vi) CIT Vs. Shivnarayan Jamnalal & Co., (1998) 232 ITR 311.

vii) CIT Vs. T. Abdul Majeed (1998) 232 ITR 50.

10. Therefore, we do not find any fallacy and illegality in the order of the ld. CIT(A) deleting the penalty of Rs.59,00,884/- u/s 271(1)(c) of the Act. Thus, the issue raised in the grounds of appeal stands dismissed.

11. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on this 18th day of January, 2022.

Sd/-	**Sd/-**
(PARTHA SARATHI CHAUDHURY)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 18th January, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**B**" बेंच, पुणे / DR, ITAT, "**B**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.