आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

श्री आर. के. पांडा, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI R.K. PANDA, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos. 1143 & 1144/PN/2014
निर्धारण वर्ष / Assessment Years : 2007-08 & 2009-10

Youth Development Co-op. Bank Ltd.,
1429/G, Poornima Apartment,
Laxmipuri, Kolhapur

PAN : AAAAY1180G

.......अपीलार्थी / Appellant

बनाम / V/s.

Asstt. Commissioner of Income Tax,
Circle – 1, Kolhapur

......प्रत्यर्थी / Respondent

Assessee by : Shri C.V. Deshpande
Revenue by : Shri Dheeraj Kumar Jain

सुनवाई की तारीख / Date of Hearing : 29-03-2016
घोषणा की तारीख / Date of Pronouncement : 31-03-2016

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These two appeals for the assessment years 2007-08 and 2009-10 have been filed by the assessee against the order of Commissioner of Income Tax (Appeals), Kolhapur dated 25-03-2014 common for both the assessment years under appeal. In both the appeals, the assessee has assailed the order of Commissioner of Income Tax (Appeals) in confirming the levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) in respect of disallowance of deduction claimed u/s. 36(1)(viia) of the Act. Since, identical grounds have been raised in both the appeals and both the appeals are arising from same set of facts, the appeals are taken up together for adjudication.

2. The brief facts of the case as emanating from records are: The assessee is a Co-operative Society engaged in the banking business. In assessment year 2007-08 the assessment was re-opened under the provisions of section 147 r.w.s. 148 of the Act and certain additions/disallowances were made in the income returned by the assessee. In assessment year 2009-10 additions on similar grounds were made in scrutiny assessment proceedings u/s. 143(3) of the Act. The additions/disallowances made in the impugned assessment years are as under :

Sl. No.	Additions/Disallowances	A.Y. 2007-08	A.Y. 2009-10
1	Disallowance of provision u/s. 36(1)(viia)	₹24,21,821/-	₹1,17,265/-
2	Disallowance of accrued interest on non performing assets (NPAs)	₹1,93,04,446/-	₹1,62,25,296/-
3	Disallowance of deduction of Amortization of Premium on Govt. Securities	₹5,30,941/-	₹17,57,700/-

On account of additions/disallowances made in the income returned by the assessee, the Assessing Officer vide order dated 28-01-2014 levied penalty of ₹68,10,706/- u/s. 271(1)(c) in the assessment year 2007-08 and vide separate order of even date levied penalty of ₹55,92,981/- in assessment year 2009-10.

Aggrieved by the order levying penalty u/s. 271(1)(c) the assessee filed appeals before the Commissioner of Income Tax (Appeals) for respective assessment years. The Commissioner of Income Tax (Appeals) vide common order deleted the penalty in respect of disallowances of accrued interest on NPAs and amortization of premium on Govt. securities. However, the Commissioner of Income Tax (Appeals) confirmed the levy of penalty in respect of disallowance of deduction made u/s. 36(1)(viia) of the Act. Against the order of Commissioner of Income Tax (Appeals) the assessee is in second appeal before the Tribunal.

3. Shri C.V. Deshpande appearing on behalf of the assessee submitted that during the course of assessment proceedings the Assessing Officer observed that the assessee has created provisions for bad and doubtful debts in the books of account for the assessment year 2007-08, ₹2,25,000/- and assessment year 2009-10, ₹3,00,000/-. However, at the time of filing of return of income the assessee had claimed deduction on account of bad and doubtful debts ₹26,46,821/- in assessment year 2007-08 and ₹31,17,265/- in assessment year 2009-10. The Assessing Officer disallowed the excess claim of deduction u/s. 36(1)(viia) i.e. ₹24,21,821/- in assessment year 2007-08 and ₹1,17,265/- in assessment year 2009-10. The assessee carried the matter in appeal to Commissioner of Income Tax (Appeals), where the Commissioner of Income Tax (Appeals) confirmed the disallowance. In second appeal before the Tribunal, the assessee could not substantiate its claim and therefore, the disallowance made in both the impugned assessment years on account of excess claim of deduction u/s. 36(1)(viia) was upheld. The Assessing Officer levied penalty u/s. 271(1)(c) on disallowance of deduction u/s. 36(1)(viia) which was confirmed by the Commissioner of Income Tax (Appeals). The ld. AR submitted that the assessee had inadvertently claimed excess

deduction u/s. 36(1)(viia) in respect of bad and doubtful debts. The wrong claim made by the assessee would not attract penalty as there was no concealment of any income or furnishing of inaccurate particulars of income as envisaged under the provisions of section 271(1)(c) of the Act. The assessee had disclosed all material facts in the return of income and all relevant documents were furnished before the Assessing Officer at the time of assessment. There was no attempt by the assessee to suppress any information during the assessment proceedings or thereafter. The ld. AR submitted that the case of the assessee is squarely covered by the decision of Hon'ble Supreme Court of India rendered in the case of Commissioner of Income Tax Vs. Reliance Petroproducts Pvt. Ltd. reported as 322 ITR 158 (SC). Further to strengthen his submissions, the ld. AR placed reliance on the decision of Co-ordinate Bench of the Tribunal in the case of Agrasen Urban Co-op. Bank Ltd. Vs. ACIT in ITA No. 355/PN/2012 for the assessment year 2007-08 decided on 19-02-2014 and in the case of N.D.I.M.C. Bank Ltd. VS. ACIT in ITA No. 1458/PN/2014 for the assessment year 2010-11 decided on 15-05-2015.

4. On the other hand Shri Dheeraj Kumar Jain representing the Department strongly defended the order of Commissioner of Income Tax (Appeals) in confirming the levy of penalty. The ld. DR submitted that it was a deliberate and conscious act of the assessee in claiming excess deduction. The assessee in assessment year 2007-08 had made provisions for bad and doubtful debts of ₹2,25,000/- against which the assessee had claimed deduction of ₹26,46,821/-. Similarly, in assessment year 2009-10 the assessee had made provision for bad and doubtful debt of ₹3,00,000/- and claimed deduction of ₹31,17,265/-. The ld. DR submitted that the penalty has been rightly levied on the

assessee for making wrong claim. In support of his submissions, the ld. DR placed reliance on the judgment of Hon'ble Supreme Court of India in the case of Union of India Vs. Dharamendra Textile Processors reported as 306 ITR 277 (SC).

5. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. We have also considered the decisions on which the rival sides have placed reliance in support of their respective contentions. The Commissioner of Income Tax (Appeals) vide impugned order has confirmed the levy of penalty u/s. 271(1)(c) in respect of excess deduction claimed u/s. 36(1)(viia) of the Act. It is an undisputed fact that the assessee had made provision for bad and doubtful debts of ₹2,25,000/- in assessment year 2007-08 and ₹3,00,000/- in assessment year 2009-10. Against the aforesaid provisions the assessee had claimed deduction u/s. 36(1)(viia) of ₹24,21,821/- in assessment year 2007-08 and ₹31,17,265/- in assessment year 2009-10. The assessee is a Co-operative Bank. The contention of the assessee is that the deduction u/s. 36(1)(viia) was inadvertently claimed in excess of the provisions made and it was not a deliberate act on the part of the employees of the assessee to claim excess deduction.

6. Here we would like to refer to Explanation 1(B) to section 271(1)(c) of the Act. The Explanation (B) to section 271(1)(c) of the Act as under:

> *"[Explanation 1.—Where in respect of any facts material to the computation of the total income of any person under this Act,—*
>
> *(A) xxxxxxxxx*
>
> *(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and*

> *that all the facts relating to the same and material to the computation of his total income have been disclosed by him],*
>
> *then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed."*

In the present case the assessee has offered explanation which was not accepted by the Revenue. We do not concur with the view of authorities below. The assessee is a Co-operative Society. By making a wrong claim in the return of income by an employee of the society, it would not benefit the employee personally. Therefore, making an excess claim could be inadvertent mistake. The explanation offered may not help the assessee in preventing disallowance in assessment proceedings but for levy of penalty the criterions are different. Therefore, the explanations furnished by the assessee should have been accepted.

7. The Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Reliance Petroproducts Pvt. Ltd. (supra) has held that a mere making of claim, which is not sustainable in law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee. The relevant extract of the findings of the Hon'ble Apex Court reads as under:

> *"12. ……………………..It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the*

assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. <u>Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty tinder section 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature."</u>

[Emphasized by us]

Here we would like to point out that the Hon'ble Supreme Court of India while rendering the judgment in the case of Commissioner of Income Tax Vs. Reliance Petroproducts Pvt. Ltd. (supra) has also considered the decision in the case of Union of India Vs. Dharamendra Textile Processors (supra).

8. The Co-ordinate Bench of the Tribunal in the case of Agrasen Urban Co-op. Bank Ltd. Vs. ACIT (supra) while deleting the penalty levied u/s. 271(1)(c) of the Act in similar circumstances held :

"10. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer, in the instant case, levied penalty on the addition of Rs.95 lakhs towards provision for bad and doubtful debts on the ground that the assessee had made a false claim and there was no bonafide reason for claiming such deduction. In appeal the Ld.CIT(A) upheld the action of the Assessing Officer. It is the submission of the Ld. Counsel for the assessee that though the amount is an inadmissible deduction/claim, however, the same was not a false claim but was an inadvertent mistake. It is the submission of the Ld. Counsel for the assessee that the claim of provision for bad & doubtful debt was very much there in the profit and loss account which were audited. Neither the Tax Consultants nor the Tax Auditors could point out the mistake for which the same remained to be deducted from the loss which was also appearing in the

same profit and loss account. We find merit in the above submission of the Ld. Counsel for the assessee that the claim of Rs.95 lakhs along with loss of Rs.2.40 crores are available in the profit and loss account which were audited by the Auditors. Even though the assessee is not entitled to claim the provision for bad and doubtful debts reserve, however, neither the Tax Consultants nor the Tax Auditors could point out the above glaring mistake. Under these circumstances the plea of the assessee that the claim for deduction was made on account of bonafide mistake has to be accepted. In our opinion, when all facts are available on record, it cannot be said that the assessee attempted to furnish inaccurate particulars of income. It is a case of making an incorrect claim. Further, in our opinion non-furnishing of a revised return does not mean that the bonafide mistake in making a wrong claim should be visited with levy of penalty u/s.271(1)(c) of the I.T. Act. This view of ours finds support from the decision of Hon'ble Bombay High Court in the case of Somany Evergreen Knits Ltd. (Supra).

10.1 We find in the case of Somany Evergreen Ltd. (Supra) the Assessing Officer made addition of Rs.32,51,161/- on account of wrong claim of depreciation. As against allowable depreciation of Rs.1.38 crores the assessee claimed depreciation of Rs.1.71 crores. During penalty proceedings, the assessee explained that it was a bonafide mistake on the part of the assessee's Chartered Accountant in making the aforesaid claim in the return of income. However, the Assessing Officer, rejecting the submissions of the assessee, held that the assessee furnished inaccurate particulars of income and levied penalty u/s.271(1)(c) of the I.T. Act. The CIT(A) confirmed the levy of penalty. On further appeal, the Tribunal relying on various decisions deleted the penalty. When the Revenue filed an appeal before the High Court, the Hon'ble High Court upheld the order of the Tribunal by observing as under :

> *"3. Regarding question B:*
>
> *(i) The respondent-assessee had during the assessment year sold its garment manufacturing machine and claimed a loss of Rs.21.68 lakhs thereon as a revenue expenditure in its return of income. In the course of the assessment proceedings, the respondent -assessee realised its mistake and withdrew the above loss shown as revenue expenditure in its profit and loss account and in the consequent return of income. The Assessing Officer accepted the above withdrawal and completed the assessment. However, he imposed penalty under Section 271(1)(c) of the Act.*
>
> *(ii) In appeal, the CIT(A) upheld the order of the Assessing Officer. On further appeal, the Tribunal by the impugned order records a finding that*

> *in the profit and loss account filed along with the return of income, the respondent-assessee has clearly described the loss as the loss on sale of its garment unit assets. This loss was added to the net loss in the computation of the total income. Thus, there was complete disclosure. The Tribunal further records that the above loss was claimed by the respondent-assessee as a revenue expenditure as the Chartered Accountant did not advice them correctly as to the legal position. However, during the assessment proceedings, the mistake was noticed and corrected by the respondent-assessee. On the above facts, the Tribunal concluded the claim for deduction made by the respondentassessee was on account of a bonafide mistake and in such circumstances, the levying of penalty was not justified.*
>
> *(iii) The grievance of the revenue is that penalty is justified in view of the fact that the respondent-assessee had not filed a revised return of income. However, the Tribunal noted that the time to file revised return had expired. In any event, even the revenue does not dispute that it was a bonafide mistake on the part of the respondent-assessee. In the above view, imposition of penalty upon the respondent-assessee is not warranted".*

10.2 We find the Hon'ble Supreme Court in the case Reliance Petro Products Pvt. Ltd. (Supra) has observed as under (short notes) :

> *"A mere making of the claim, which is not sustainable in law, by itself will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.*
>
> *Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion attract the penalty under section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not acceptable by AO for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature".*

10.3 Respectfully following the above decisions and in view of our reasons given in the preceding paragraphs we are of the considered opinion that this is not a fit case for levy of penalty u/s.271(1)(c) of the I.T. Act. The decision of Hon'ble Supreme Court in the case of Makdata Pvt. Ltd. (Supra) is under different set of facts and is not applicable to the facts of the present case. In this view of the matter, we set-aside the order of the Ld.CIT(A) and direct the Assessing Officer to cancel the penalty levied u/s.271(1)(c) of the Act. The grounds raised by the assessee are accordingly allowed.

9. The Tribunal in the case of N.D.I.M.C. Bank Ltd. VS. ACIT (supra) deleted the penalty wherein a Co-operative Bank claimed wrong deduction u/s. 36(1)(viia) of the Act. The findings of the Tribunal are as under :

> *"5. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. It is an undisputed fact that the assessee is a Co-operative Society carrying on banking business. It is also not disputed that the assessee has suffered huge losses in the impugned assessment year. The assessee has claimed deduction u/s. 36(1)(viia) in return of income. The explanation given by the assessee for making wrong claim in respect of its rural branches is, that the Accountant who had prepared the accounts was ignorant about the fact that the population of rural areas i.e. Niphad and Pimpalgaon Baswant is more than ten thousand. Therefore, the branches located at above two places do not fall within the ambit of the term rural branches.*
>
> *We are of the view, that the explanation furnished by the assessee seems to be fairly justified. The assessee is a Cooperative Bank and the employees/Accountant would not have gained by giving false or inaccurate particulars. The bonafide mistake committed by the Accountant at initial stage remained un-detected even during audit due to oversight.*
>
> *6. Be that as it may, the assessee had claimed wrong deduction u/s. 36(1)(viia). It is not the case of Revenue that vital information was concealed or not furnished by the assessee. The assessee had furnished complete particulars without camouflaging any transaction. The Hon'ble Supreme Court of India in the case of Reliance Petroproducts (P) Ltd. (supra) has held; "By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnish inaccurate particulars". The Hon'ble Apex Court further observed that merely because the assessee had claimed deduction which has not been accepted by the Revenue, penalty u/s. 271(1)(c) cannot be levied. Mere making of a claim which is not sustainable in law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee.*
>
> *7. In the present case it is evident that the assessee had made wrong claim u/s. 36(1)(viia) with respect to two rural branches i.e. Niphad and Pimpalgaon Baswant, without ascertaining whether the aforesaid two branches fall within the definition of term "rural branches" or not. It is not a case of concealment of income or furnishing of*

inaccurate particulars. At the most it can be termed as reckless claim. For invoking penal provisions for filing inaccurate particulars, deliberate act or omission on behalf of the assessee should be made out.

In view of the facts of the case and the law laid down by the Hon'ble Supreme Court of India, we are of the considered view that it is not a case for levy of penalty u/s. 271(1)(c). Accordingly, we set aside the impugned order and allow the appeal of the assessee."

10. Thus, in view of the facts of the case and the decisions discussed above, we are of the considered opinion that it is not a fit case for levy of penalty. Accordingly, the order of Commissioner of Income Tax (Appeals) confirming penalty is set aside and the appeals of the assessee are allowed.

Order pronounced on Thursday, the 31st day of March, 2016.

Sd/-	Sd/-
(आर. के. पांडा / R.K. Panda)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st March, 2016
RK

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

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

//सत्यापित प्रति // True Copy// आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune