

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA no.137/Nag./2015
(Assessment Year : 2007-08)

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|---|--|------------------|
| Dy. CIT, Chandrapur Circle, Aayakar Bhawan, Railway Station Road, Chandrapur-442 401 | | Appellant |
| v/s | | |
| The Chandrapur Dist. Cent. Co-op Bank Ltd., Civil Line, Chandrapur-442 401 PAN – AAAJC 0023 F | | Respondent |

Assessee by : Shri Jitesh Kumar
Revenue by : Shri K. P. Dewani

Date of Hearing – 07.05.2018

Date of Order – 11.06.2018

ORDER

PER SHAMIM YAHYA A.M.

This appeal by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals)-4, Nagpur dated 11.02.2015 and pertains to assessment year 2007-08.

2. The ground of appeal read as under:

1. Whether on the facts and circumstances of the case, and law the CIT(A) erred in deleting penalty levied u/s. 271(1)(c) without appreciating the fact that the assessee had deliberately claimed a deduction under the head “Investment Depreciation Reserve” without routing the same through the P & L account and which was not allowable under the I. T. Act, 1961.

3. Brief facts of the case leading to the levy of penalty u/s. 271(1)(c) are as under:

Return of income declaring total loss at Rs.1,30,74,949/- was filed on 31-10-2007. The assessee is a cooperative bank and derives income from banking activities. Subsequently the assessee had filed revised return of income on 21-07-2008 incorporating therein a claim of deduction u/s 38(l)(viiia)(a) towards the provisions for bad and doubtful debts and filed the return declaring loss of Rs. 4,37,36,949/-. During the course of assessment proceedings it was noted by the Assessing Officer that the assessee had claimed a deduction of Rs.8,21,77,045/- towards "Investment Depreciation Reserve" while no such amount has been debited to P&L a/c for the year under consideration. The Assessing Officer required the assessee to explain the same and it was stated by the assessee that the said amount had been debited in the P&L a/c in the case of the assessee for the respective years as under:-

| Financial year 2002 03 | Amount | Total |
|-------------------------------|---------------|--------------|
| 2004-05 | 22121000 | 22121000 |
| 2005-06 | 30000000 | 52131000 |
| 2005-06 | 30000000 | 82131000 |

4. It was further explained that since the amounts were not allowable in the respective years they were added back by the assessee itself in the computation of income of the respective years. It was explained that entries in the books of account in respect of the above should have been reversed at the time of adding back to the computation of income but this mistake is only a clerical in nature and would not affect assessing the real income of the assessee for the year under consideration. It was also stated that in view of Reserve Bank of India, the circular for charging the depreciation on investment to P&L a/c issued on 13-07-2005 the assessee had claimed the above 'Investment Depreciation Reserve' amounting to Rs.8,21,77,045/- in its return of income for assessment year 2007-08. It was explained that reliance in this regard was placed by the assessee in the case of

United Commercial Bank Vs. CIT 156 CTR (SC) 380 wherein the Hon'ble Supreme Court had held as under:

'not making the proper entries in the P&L a/c could hardly be ground for not assessing the real income and valuing the closing stock, it was open to the assessee to value it at the cost or market value whichever is lower'.

5. The Assessing Officer considered the various submissions of the assessee but did not agree with the same. The Assessing Officer concluded that the assessee had claimed the deduction of Rs.8,21,77,045/- in computation sheet and no such amount had been debited to P&L a/c and the said provisions, which were claimed in the respective years, were suo moto added back by the assessee in its computation of income and that the said claim was not allowable. It was also concluded by the Assessing Officer that the finding of the Hon'ble Supreme Court in the case of United Commercial Bank Vs. CIT (supra) was distinguishable and did not apply to the facts of the case and that the assessee could not make this claim u/s 37 of the Act also as the said section relates to claim of expenses and the said depreciation in investment did not amounts to claim of expenditure. In view of the above facts, the Assessing Officer added an amount of Rs.8,21,77,045/- to the income of the assessee.

6. During the course of appellate proceedings the above issue was considered by the Ld. CIT(A) and he came to the conclusion that out of the claim of Rs.8,21,77,045/-, the assessee would only be allowed the claim to the extent of Rs.82.17 lacs towards amortization of premium. The assessee accepted the said decision of the Id. Commissioner of Income Tax (Appeals) and has not gone out in further appeal.

7. During the course of penalty proceedings detailed submissions were filed by the assessee and reliance was placed on various judicial pronouncements including CIT V.

Reliance Petro Products (P) Ltd. 322 ITR 158. The Assessing Officer considered the various submissions and came to the conclusion that the case of the assessee is a fit case for levy of penalty u/s 271(l)(c) and he therefore imposed penalty of Rs.3,00,00,000/-.

8. Against the above order, the assessee appealed before the Id. Commissioner of Income Tax (Appeals).

9. The Id. Commissioner of Income Tax (Appeals) deleted the addition by inter-alia holding as under:

6. I have carefully considered the facts of the case and the written submissions of the appellant. I find substantial merit in the submissions made. The appellant is engaged in the business of banking and during the course of said activity acquired certain government securities in terms of policy of Reserve Bank of India. The said investment is clearly depicted in the balance sheet wherein the face value and market value of such securities at the close of each accounting year is duly reflected. The appellant has been acquiring the said securities since the FY 2001-02 and the total investment made in receptive years along with the fall in market value is also been duly mentioned in the balance sheet. In the year 2007-08 the market value of the securities were shown at Rs. 67.74 crores as against the purchase price of Rs. 85.36 crores and the consequent erosion of value for the year ended on 31st March 2007 comes to Rs. 17.62 crores. All the above facts are clearly evident from the bare perusal of all the returns filed in respective years. There is merit in the submissions of the appellant that it was under a bonafide belief that there had been an erosion in the value of assets to the extent of Rs. 17.62 crores and had consequently claimed deduction in its computation of income amounting to Rs. 821.77 lacs being Investment Depreciation Reserve which was provided in the books of account in earlier years. The complete facts with regard to the claim of deduction were apparent on face of record and no additional material or enquiry was required to be made by the Ld. AO to make the said disallowance. The disallowance has been made by the Ld. AO on the basis of facts disclosed by the appellant in its return of income and hence the said mistake is a bonafide mistake and cannot be defined as concealment or furnishing of inaccurate particulars of income. It is settled position of learned CIT-A further relied upon following case laws in his order; law that mere incorrect claim in the return of income would not amount to furnishing // of inaccurate particulars of income. The Ld. AO has not pointed out that any facts submitted in the return of income were factually incorrect or false or were stated with intent to mislead. There is nothing to suggest that the appellant was in any manner trying to mislead the Ld. AO and

rather it is evident that the appellant was under a bona fide belief that the said amount of Rs. 821.77 lacs was an allowable expenditure. The said claim of appellant may have been incorrect but there does not appear to be any material or anything to suggest that the said claim would amount to furnishing of inaccurate particulars of income or amount to concealment of income.

10. The Id. Commissioner of Income Tax (Appeals) further relied upon the following case laws in his order:

1. CIT vs. Reliance Petroproducts (P.) Ltd. [2010] 322 ITR 158 (SC);
2. CIT vs. International Audio Visual 288 ITR 570 (Del);
3. DCIT vs. M/s. Andhra Bank Ltd. in ITA No. 630/Hyd./2012 dated 4.10.2013;
4. CIT vs. HDFC Bank in ITA No. 250/Mum/2012

11. Against the above order, the Revenue is in appeal before us.

12. We have heard both the counsel and perused the records. The Id. Departmental Representative relied upon the orders of the assessing officer.

13. Per Contra, the learned counsel of the assessee supported the order of the Id. Commissioner of Income Tax (Appeals). Furthermore, the learned counsel of the assessee summarized his submissions as under:

A) Assessee is co-operative bank holding various State & Central Govt. Securities. Cost of acquisition of Govt. Securities is Rs.82.90 crores. Market value as on the close of accounting year is Rs.67.74 crores. Diminution in value of Govt. Securities is thus to the tune of Rs.17.62 crores. Assessee in return of income has claimed deduction at Rs.8.21 crore on account of diminution in value of securities out of Rs 17.62 crores .

B) Details of cost of acquisition ,market value and face value in respect to government securities held are reflected on face of Balance Sheet (P-1, Vol-I) submitted along with return of income and also submitted in assessment proceedings. Facts and figures submitted in balance sheet are not found incorrect in any manner

C) Assessee had made provisions in books of account of earlier years to the tune of Rs.8.21 crores on account of diminution in value of Government securities which was disallowed in computation of income . Assessee in the return of income for the earlier years had not claimed deduction in respect to same.

D) In case of assessee in appellate proceedings deduction of Rs.82.17 lacs has been allowed by way of amortization as the securities were considered to be under the category Held to Maturity as per guidelines of Reserve Bank of India.

E) Banks have to hold requisite percentage of deposit in form Government securities to comply with SLR Ratio. It is settled proposition of law that Government securities held for purpose of SLR ratio constitute stock in trade of bank and loss on diminution in value of government securities is allowable deduction.

Reliance on:

i) ITAT Order in ITA No 630/Hyd/2012 in the case of Andhra Bank Ltd Vide order dated 04/10/2013

(P-30-33)[Vol-III]

ii) ITAT Order in ITA No 507/Pn//2014 in the case of The Hasti Co-operative Bank Limited Vide order dated 02/05/2016 (P-6 -8)[Vol-II]

iii) ITAT Order in ITA No 778/Pn/2011 in the case of Latur Urban Co-operative bank Limited Vide order dated 31/08/2012 (P-27-28) [Vol-II]

iv) ITAT Order in ITA No 846/Pn//2006 in the case of The Sangli BankLtd Vide order dated 30/05/2013.

(P-32) [Vol-II]

v) (2013) 356 ITR 0549 (Kanrn.) Karnataka Bank Ltd vs ACIT

(P-35-37,39,42)[Vol-II]

vi) (2003) 264 ITR 0545 (Ker)

CITvs Nedungadi Bank Ltd (P-55)[Vol-II]

The ratio laid down by aforesaid decisions squarely applied to facts in case of assessee. In view of above loss on account of diminution in value of government securities is allowable deduction .

F) The penalty proceedings are independent proceedings and once the loss in Govt. Securities is not in dispute the disallowance of claim is unjustified and unsustainable. Diminution in value of securities as claimed in the return being allowable deduction question of levy of penalty on the same does not arise.

G) It is settled proposition of law that that mere making a claim which is not accepted or was not acceptable to revenue cannot be said to furnishing of inaccurate particulars of income so as to attract penalty u/s 271 (1)(c) of IT Act 1961.

Reliance on:

i) (2010)322 ITR 01 58(SC)

CIT vs. Reliance Petroproducts (P) Ltd

ii) Hon'ble High court of Judicature at Bombay Order in ITA No 3899 of 2010 in the case of M/s Aditya Birla Nova Ltd Vide order dated 14/08/2012 (P-8)[Vol-III]

iii) (2007) 288 ITR 0570(Delhi)

CIT vs International Audio visual (P-18)[Vol-III]

H) A.O. at para 4 at page 3 of penalty order has observed that the expenses claimed is prior period and levied penalty u/s 271(1)(c) of IT Act 1961.

Disallowing expenditure as prior period expenses cannot be visited with penalty u/s 271 (1)(c) of IT. Act 1961.

Reliance on :

I) ITAT order in ITAX No. 1511/Mum/2015 in case of M/s. Electropneumatics & Hydraulic (India) Pvt. Ltd. vide order dated 10/11/2016.(P-58,60)[Vol-II]

I) The order imposing penalty makes it evident that A.O. has observed at para 10 that the claim of assessee is incorrect. It is settled proposition of law that incorrect claim cannot be visited with levy of penalty u/s 271(1)(c) of IT. Act 1961.

J) It is settled proposition of law that the bonafied mistake cannot be visited with penalty u/s 271(1)(c) of IT. Act 1961.

Reliance on :

i) (1998)230 ITR0048(SC)
CIT vs Ask Enterprises (P-21)[Vol-III]

ii) (2012) 348 ITR 0306(SC)
Price water Coopers Pvt Ltd vs CIT
(P-25,28)[Vol-III]

K) Assessee is cooperative bank whose Share capital is held by several individuals and not by any one group of individuals is controlling interest .In such factual situation there could be no motive or intention to conceal or furnish inaccurate particulars of income The administration is made through employees in transparent manner. It could be bonafied mistake and nothing else . Levy of Penalty u/s 271(1)(c) of IT Act 1961 is unjustified.

14. Upon careful consideration, we note that the assessee is a co-operative bank which held various government securities. The cost of acquisition of these government securities was Rs.82.90 crores. The assessee had debited the following amount in the earlier years towards the depreciation in value of investment:

| Financial year 2002-03 | Amount | Total |
|------------------------|----------|----------|
| 2004-05 | 22121000 | 22121000 |
| 2005-06 | 30000000 | 52131000 |
| 2005-06 | 30000000 | 82131000 |

15. These amounts were added back in the computation of the respective years itself as they were not allowable. However, in view of the RBI Circular, for charging the depreciation on investment to profit and loss account issued on 13.07.2005, the assessee claimed Rs.8,21,77,045/- in its return of income for the assessment year 2007-08. In this regard, the assessee placed reliance by the decision of the Hon'ble Apex Court in the case

of *United Commercial Bank* (supra), wherein it was held that not making the proper entry in profit and loss account could hardly be a ground for not assessing the real income. The Assessing Officer has distinguished this Hon'ble Supreme Court decision on the plea that the afore-aid case relates to claim of deduction u/s. 37, while the present case was depreciation on investment. In our considered opinion, this distinction brought out by the Assessing Officer is not correct and the same is erroneous. Just as the right profit can be determined by allowance of proper claims u/s. 37 so is the case of depreciation in investment. Proper deduction of depreciation also from the profit will only show the real income which is to be assessed. Hence, the disallowance by distinguishing this Hon'ble Apex Court decision is itself not correct. Furthermore, as evident from the submissions hereinabove, the market value of the securities at the close of the accounting year was Rs.67.74 crores. Thus the depreciation in value of the government securities was to the tune of Rs.17.62 crores. The assessee in the return of income has claimed deduction of Rs.8.21 crores on account of depreciation in value of the securities out of Rs.17.62 crores. In these circumstances, the claim of deduction by the assessee cannot be said to be a subject matter of levy of penalty u/s. 271(1)(c) of the Act, just because assessee has accepted the quantum disallowance. The assessee has duly disclosed all the necessary materials. The sole reason for the Assessing Officer's disallowance was not routing the same through profit and loss account. This by itself cannot be said to be a contumacious conduct warranting levy of penalty u/s. 271(1)(c) of the Act. The assessee was under a bonafide belief that the said amount was an allowable expenditure. All the necessary facts in this regard were duly disclosed by the assessee. Hence, there was no concealment of income. Hence, the assessee cannot be held to be guilty of either concealment of income or furnishing of inaccurate particulars of income. In this regard, the case laws relied upon

by the Id. Commissioner of Income Tax (Appeals) and referred by the Id. Counsel of the assessee are germane and support the case for deletion for levy of penalty u/s. 271(1)(c) of the Act. Furthermore, we find that similar penalty u/s. 271(1)(c) was deleted by ITAT, Mumbai Bench in the case of Vasai Vikas Sahakari Bank Ltd. in ITA No. 2869/Mum/2015 vide order dated 22.3.2017. In this case, it was held as under:

4. We have heard the rival contention of both the parties. We find that the assessee has merely failed to provide the provision in bad debt and doubtful debt though the provision is made as per RBI guidelines in the earlier was excess. The assessee has directly claimed the deduction in computation of income instead of providing same in the books for debting in the P & L account as per the provisions of the Act. Therefore, the assessee had neither concealed nor filed any inaccurate particulars of income the assessee has duly disclosed the facts of income in its return of income filed before the department. Therefore, we are of the view that the issue in controversy is covered by the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P.) Ltd. [2010] 322 ITR 158 (SC) Petroproduct (supra) wherein it is held that a mere making claim which is not sustainable in law will not amount to furnishing inaccurate particulars regarding the income of the assessee. such claim made in return cannot amount to inaccurate particular and no penalty u/s. 271(1)(c) can be imposed.

16. Accordingly, in the background of the aforesaid discussion and precedent, we do not find any infirmity in the order of the Id. Commissioner of Income Tax (Appeals). Accordingly, we uphold the same.

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

Order pronounced in the open Court on 11.06.2018.

Sd/-
RAM LAL NEGI
JUDICIAL MEMBER

Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER

NAGPUR, DATED: 11.06.2018

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Nagpur City concerned;
- (5) The DR, ITAT, Nagpur;
- (6) Guard file.

/True Copy /

By Order

Roshani, Sr. PS

(Sr. P.S./P.S.)
ITAT, Nagpur

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