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A.F.R.

RESERVED ON 04.10.2018
DELIVERED ON 21.02.2019

Court No. - 35

Case :- INCOME TAX APPEAL No. - 820 of 2012

Appellant :- Hamirpur District Cooperative Bank Limited

Respondent :- The Commissioner Income Tax And Another

Counsel for Appellant :- Rakesh Ranjan Agarwal, Suyash Agarwal

Counsel for Respondent :- C.S.C. I.T., Praveen Kumar

Hon'ble Bharati Sapru, J.

Hon'ble Salil Kumar Rai, J.

(Delivered by Hon'ble Salil Kumar Rai, J.)

Heard the counsel for the appellant and the counsel for the revenue.

The present appeal has been filed by the appellant-assessee under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as, 'Act') against the judgment and order dated 6.9.2012 passed by the Income Tax Appellate Tribunal, Lucknow Bench 'A: Lucknow in I.T.A. No. 114/Lkw/2012. I.T.A. No. 114/Lkw/2012 was filed by the assessee against the order dated 23.12.2011 passed by the Commissioner of Income-tax (Appeals)–II, Kanpur [hereinafter referred to as, 'CIT(A)'] under Section 250 of the Act. The assessment year involved in the present appeal is 2007-08.

The following questions of law have been framed in the memorandum of appeal for decision by this Court:-

“i. Whether on the facts and the circumstances of the ITAT was correct to confirm the penalty of Rs.21,17,500/- under Section 271(1)(c) of the Act for A.Y. 2007-08?

ii. Whether the ITAT right in law holding that the appellant made incorrect claim which tantamount to furnishing inaccurate particulars of income so as to attract the penalty under section 271(1) (c) of Act applying the decision of CIT vs. Zoom Communication Pvt. Ltd. (2010) 327 ITR 510 (Del) contrary to decision of CIT vs. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (SC) and CIT vs. Rubber Udyog Vikas Pvt. Ltd. (2011) 335 ITR 588?

iii. Whether the ITAT while confirming the penalty rightly did not consider that while preparing the income tax return in not adding income tax paid amount to Rs.12,24,000/- and statutory provisions amounting to Rs.52,24,042/- made as required under U.P. Cooperative Samiti Limited, where not added back in advertently being intentional bonafide and clerical mistake due to the ignorance of insertion of sub section (4) of section 80P of the Act by Finance Act, 2006?

iv. Whether the appellant bank having claim the amounts of Rs.12,24,000/- and Rs.52,24,042/- as the transactions having disclosed in the return, on the basis of the accountants prepared by the bank staff in the format prescribed for cooperative banks, under the control of RBI / NABARD without any professional advice, the penalty under Section 271(1) (c) of the Act was sustainable?

v. Whether the ITAT was legally correct in recording perverse finding of fact pertaining to “deliberate and intentional omission” on part of assessee in giving inaccurate particulars contrary to finding recorded by A.D. & CIT (A)?”

The appellant-assessee is a cooperative bank registered under the Cooperative Societies Act, 1965 (hereinafter referred to as, 'Act, 1965) and is carrying on banking business in Mahoba and Hamirpur Districts with its Head Office at Mahoba (U.P.). The assessee is governed by the Banking Regulations Act, 1949. The assessee filed its return under the Act for the assessment year 2007-08 on 31st of October, 2007 showing its gross total income to be Rs.20,16,000/-. The return was processed under Section 143(1) of the Act and was selected for scrutiny. Notices were issued to the assessee who submitted the details required in the assessment proceedings. During the assessment proceedings, it was noticed by the Assessing Officer (hereinafter referred to as, 'A.O.') that the assessee had claimed a tax credit in respect of advance tax of Rs.12.24 lacs which had been included in the expenses of the assessee and were reflected under the account head 'other expenditure' and further that an amount of Rs.52,24,042.46/- had been debited in the profit and loss account as loss from sale of or dealing with non-banking business. The assessee was also asked to

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explain as to why the said amounts should not be disallowed. The assessee submitted its reply but the A.O. disallowed the claim of Rs.52,24,042.46/- and computed the total income of the assessee for tax as Rs.84,64,040/- and vide his order dated 16.11.2009 held that the assessee had furnished inaccurate particulars of its income and therefore penalty proceedings under Section 271(1)(c) of the Act were initiated against the assessee. Consequently, a show cause notice was issued to the assessee on 03.05.2010 to which the assessee submitted its reply on 25.05.2010.

In its reply, the assessee pleaded its ignorance of the provisions of the Act and stated that their profit was calculated as per the provisions of the Cooperative Societies Act and their bye-laws after taking into account necessary reserves/provisions and denied that they had concealed the particulars of their income or furnished inaccurate particulars of the same. However, the Deputy Commissioner of Income Tax-VI, Kanpur vide his order dated 28th of May, 2010 held that the assessee-appellant had concealed its income by filing inaccurate particulars and, therefore, the case was covered by Section 272(1)(c) of the Act and directed the assessee to pay a penalty of Rs.21,70,500/-. The order dated 28th of May, 2010 was challenged by the assessee before the Commissioner of Income Tax

(Appeals) II, Kanpur who vide order dated 23.12.2011 rejected the challenge and confirmed the order passed by the Assessing Officer. Subsequently, the assessee filed Second Appeal No. I.T.A. No. 114 before the Income Tax Appellate Tribunal which was also dismissed by the Tribunal vide its judgment and order dated 06.09.2012. Before the CIT(A) as well as the Tribunal, the assessee had pleaded that in the assessment year previous to 2007-08, the income of the assessee was exempted under Section 80-P of the Act but the Act was amended vide Finance Act, 2006 w.e.f. 01.04.2007 and the assessee-cooperative bank was excluded from the purview of Section 80-P of the Act resulting in a taxable income for the assessment year 2007-08. It was pleaded by the assessee that its accounts were audited by the cooperative sector auditors who had issued an audit report under Section 44-AB of the Act and the staff of the assessee-bank or its auditors were not professionals or chartered accountants well versed with the provisions of the Act and the return was accordingly filed on the basis of profit and loss account as in the past and there was no concealment or furnishing of inaccurate particulars of income and in any case there was no personal benefit involved in the discrepancy in filing the return which was unintentional and was a bona fide mistake, therefore, no case for levy of penalty under Section

271(1)(c) of the Act was made out against the assessee. The aforesaid plea of the assessee-bank was not accepted by the appellate courts who vide their orders dated 23.12.2011 and 06.09.2012 dismissed the appeals filed by the assessee. Thus, the present appeal under Section 260-A of the Act.

The counsel for the appellant-assessee has argued that while passing the impugned order, the Tribunal has not considered that the discrepancy in the return filed by the assessee was a bona fide mistake and there was no intention of the appellant to furnish inaccurate particulars of its income or to conceal its income and the aforesaid discrepancy was because the income of the assessee-bank in the preceding years was exempted under Section 80-P of the Act and the assessee-appellant was excluded from the benefit of Section 80-P of the Act only w.e.f. 01.04.2007 resulting in a taxable income for assessment year 2007-08. It was argued that as there was no personal benefit to any official or director of the bank, therefore, the case did not come within the purview of Section 271(1)(c) of the Act. It was further argued that the accounts of the assessee-appellant were audited as per the Act, 1965 and the assessee-appellant had no professional advice while the accounts of the assessee were prepared by its staff regularly in the format prescribed for cooperative banks

which are controlled by the RBI/NABARD. It was argued that the assessee had successfully discharged the onus that no case for levy of penalty under Section 271(1)(c) of the Act was made out against the assessee. In support of his submission, the counsel for the assessee has relied on *Commissioner of Income Tax, Ahmedabad vs. Reliance Petroproducts Private Limited* 2010 (11) SCC 762 and *Dilip N. Shroff vs. Joint Commissioner of Income Tax, Mumbai & Another* 2007 (6) SCC 329.

Rebutting the arguments of the counsel for the assessee, the counsel for the revenue argued that the penalty levied on the appellant was for a statutory offence and the concealment made by the assessee came to light only when its details were divulged by the assessee-appellant on being specifically inquired into by the A.O. It was argued that the assessee was a bank and is adequately assisted by a qualified staff. The counsel for the revenue argued that it was a clear case of an intentional claim of the impugned expenses and thus of concealment of particulars of income and it was not a case of bona fide mistake on the part of the assessee in supplying the particulars of its income. It was argued by the counsel for the revenue that the assessee had not been able to successfully discharge its burden that it was not a case for levy of penalty under

Section 271(1)(c) of the Act.

We have considered the rival submissions of the counsel for the appellant-assessee and the counsel for the revenue.

The relevant portion of Section 271(1)(c) of the Act reads as follows:

“S. 271. (1) If the [Assessing Officer] or the Commissioner (Appeals) [or the Commissioner] in the course of any proceedings under this Act, is satisfied that any person-

.....

(c) has concealed the particulars of his income or furnished inaccurate particulars of [such income, or]

.....

Explanation 1. - Where in respect of any facts material to the computation of the total income of any person under this Act,

(A) such person fails to offer an explanation or offers an explanation which is found by the [Assessing Officer] or the Commissioner (Appeals) [or the Commissioner] to be false, or

(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 ***Dilip N. Shroff (supra)***, the Supreme Court held that before a penalty could be imposed under Section 271(1)(c) of the Act, the entirety of the circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of its income or had furnished inaccurate particulars thereof. In its aofresaid judgment, the Supreme Court further held that Section 271(1)(c) of the Act was a penal statute and the concealment and furnishing of inaccurate particulars referred to a deliberate act on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of concealment or furnishing of inaccurate particulars. However, the Supreme Court in ***Union of India & Others vs. Dharamendra Textile Processors and Others 2008 (13) SCC 369*** held that the explanations appended to Section 271(1)(c) of the Act indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars *while filing the return*. It was held that Section 271(1)(c) of the Act had been enacted to provide a remedy for loss of revenue and the penalty under the said provision was a civil liability. The Supreme Court further held that willful

concealment was not an essential ingredient for attracting civil liability as was the case in matter of prosecutions under Section 276-C of the Act. In ***Dharamendra Textile (supra)***, the Supreme Court held that the ***Dilip N. Shroff's*** case had not been correctly decided. Subsequently, in ***Reliance Petroproducts (supra)***, the Supreme Court held that ***Dharamendra Textile (supra)*** had overruled ***Dilip N. Shroff*** only to the extent that ***Dilip N. Shroff*** held that mens rea on the part of the assessee was an essential ingredient for imposing penalty under Section 271(1)(c) of the Act but the Supreme Court in ***Dharamendra Textile (supra)*** found no fault with the reasoning in ***Dilip N. Shroff (supra)*** regarding the meaning of the terms 'conceal' and 'inaccurate'. It is relevant to notice that in ***Reliance Petroproducts (supra)***, the assessee had neither concealed its income or furnished inaccurate particulars of its income in the return and all the details given in the return filed by the assessee were found to be correct. The dispute between the assessee and the revenue was regarding certain amounts for which the assessee claimed deductions under Section 14-A of the Act which was not allowed by the revenue. The observations of the Supreme Court made in Paragraph nos. 10 and 18 of the said judgment are relevant for the purposes and are reproduced below:

“10. Section 271(1)(c) is as under:-

*"271. Failure to furnish returns, comply with notices, concealment of income, etc.
- (1) If the Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that any person-*

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income."

*A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. **Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the learned counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income.** As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the Section 271(1)(c) would embrace the meaning of the details of the claim made. **It is an admitted position in the present case that no information given in the return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held***

guilty of furnishing inaccurate particulars.

18. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271 (1) (c) of the Act. ***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.***

(emphasis added)

A reading of the judgment of the Supreme Court in ***Reliance Petroproducts (supra)*** shows that the particulars furnished in the return filed by the assessee would be relevant to decide whether the assessee could be subjected to penalty under Section 271(1)(c) of the Act and if the particulars furnished in the return are found to be inaccurate the liability to pay penalty under Section 271(1)(c) would arise. The relevant observations of the Supreme Court in Paragraph no. 12 of the aforesaid judgment are reproduced below:

“12. Therefore, it is obvious that it must be shown that the conditions under Section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed because that is the

only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise.”

(emphasis added)

The dispute in the present case shall be considered in light of the law laid down by the Supreme Court in its aforesaid judgments.

It is an admitted case of the assessee that Rs.12.24 lacs and Rs.52.24 lacs which were shown in the profit and loss account and under the head of other expenditures and which were included by the A.O. in computing the business income of the assessee were liable to be assessed for tax. It is also apparent that the assessee had paid an advance tax of Rs.12.24 lacs and had debited the said amount under 'other expenditure'. Rs.52.24 lacs was debited in profit and loss account as loss from sale of or dealing with non-banking business even though the said amount was not an expense but an appropriation of profit. It is also evident that even after notice was issued to the assessee under Section 143(2) of the Act, the assessee did not file any revised return to correct the omissions. The contention of the assessee in the courts below and before this Court was that the error in its return was because the assessee was excluded from the purview of Section 80-P of the Act w.e.f. 01.04.2007 and the assessee had been claiming benefit of Section 80-P of the Act in the previous

assessment years. The said explanation cannot be accepted in view of the particulars given in the return filed by the assessee. A perusal of the return filed by the assessee, which according to the judgment of the Supreme Court in ***Reliance Petroproducts (supra)*** is the only document where the assessee could have furnished the particulars of his income, shows that in Schedule F (statement of total income) at Serial No. 6, the assessee had disclosed his gross total income as Rs.20,16,002.20/- and did not claim any deductions under Chapter VI-A of the Act. It is pertinent to note that Section 80-P of the Act is a part of Chapter VI-A of the Act. It is also pertinent to note that under Section 80-B(5) of the Act, the gross total income means the total income computed in accordance with the provisions of the Act before making any deductions under Chapter VI-A of the Act. Evidently, the assessee had furnished inaccurate particulars of his income and had also concealed the particulars of his income which were deliberate and intentional. The Tribunal or the appellate authority committed no error or illegality in not accepting the plea of the assessee that the mistake in filing its return was bona fide and because of the amendment in the Finance Act, 2006 excluding the assessee from the purview of Section 80-P of the Act.

The next contention of the assessee that the

mistake in filing the return occurred because the assessee lacked the services of professional chartered accountants can also not be accepted in as much as under Section 44-AB of the Act, the assessee was required to get its account audited by an accountant as defined in Section 288(2)-Explanation, i.e. chartered accountant within the meaning of Chartered Accountants Act, 1949. It is not a case where the assessee has claimed deductions under any head which had been disallowed by the revenue but is a case where the assessee had concealed its total taxable income and furnished inaccurate details in its return. The appellant/assessee was not able to establish his bonafides regarding the inaccurate particulars furnished in his return.

For the aforesaid reasons, the proceedings under Section 271(1)(c) of the Act were rightly initiated against the assessee and the penalty was also rightly imposed on him. There is no error in the impugned order dated 6.9.2012 passed by the Income Tax Appellate Tribunal. The questions of law are answered accordingly and the appeal stands ***dismissed***.

Order Date :- 21.2.2019

Satyam