IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR

INCOME TAX APPEAL NO. 83 OF 2018

(THE PR. CHIEF COMMISSIONER OF INCOME TAX-3, NAGPUR **VERSUS** M/S CHANDRAPUR DISTRICT CENTRAL COOPERATIVE BANK)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	*Court's or Judge's order*

Shri. A. Parchure, counsel for the Appellant.
Shri K.P. Dewani, counsel for the respondent.

CORAM : A. S. CHANDURKAR AND N. B. SURYAWANSHI, JJ.

DATED : 7th DECEMBER, 2020.

Heard.

For the assessment year 2007-08, the respondent-Assessee claimed deduction of Rs.821.77 Lakhs as depreciation on investment. The Assessment Officer while examining the case of the assessee on scrutiny found that such depreciation claimed on the amount of investment was incorrect. He also found the alternate claim as made with regard to investments to be incorrect. On the ground that the assessee had given incorrect particulars of its income, the Assessment Offider proceeded to levy penalty under Section 271(1)(c) of the Income Tax Act, 1961 (for short, 'the said Act'). Being aggrieved, the assessee filed an appeal. The Commissioner of Income Tax (Appeals) held that the assessee was a co-operative bank and its share capital was held by various individuals. There did not appear to be any motive or intention to conceal the assessable income by the assessee. By holding that mere making of a claim which was not sustainable in a law would not amount to furnishing inaccuate particulars so as to attract penalty under Section 271(1)(c) of the said Act, the appeal was allowed. That order was maintained by the Income Tax Appellate Tribunal. Hence, this appeal by the Revenue.

Shri Anand Parchure, learned counsel for the appellant seeks to urge that the error committed by the Tribunal in deleting the penalty as levied under Section 271(1)(c) of the said Act without considering the aspect that such deduction had been deliberately claimed gave rise to a substantial question of law in the appeal. It was his submission that there was no basis whatsoever to come to the conclusion that the claim for excess deduction was a *bona fide* mistake. On the contrary, such excess deduction was deliberately claimed by the assessee despite the fact that in earlier years similar deduction had been disallowed by the Assessing Officer. It could not be said that by raising an incorrect claim for deduction the assessee was not liable for penalty. Placing reliance on the decision in *Commissioner of Income Tax Versus Zoom Communications (P) Ltd.* [**(2010)191 Taxman 179 (Delhi)**], he submitted that the orders passed by the Tribunal were liable to be interfered with and the penalty as imposed ought to be upheld.

On the other hand Shri K.P. Dewani learned counsel for the respondent supported the impugned adjudication. According to him, no incorrect particulars were furnished by the assessee and all details had been disclosed in the return as filed. The said figures of depreciation were reflected in the profit & loss account of the assessee which itself indicated that there was a bona fide mistake in claiming deduction. The assessee was under a belief that the amount in question was an allowable expenditure and merely making a claim that was not sustainable in law would not amount to furnishing inaccurate particulars. In that regard, he placed reliance on the decisions in *Commissioner of Income Tax Versus Versus Reliance Petroproducts (P) Ltd.* [**(2010) 322 ITR 0158**], *Commissioner of Income Tax Versus Bank of Baroda* [**(2003) 262 ITR 0334**) and the judgment of the Division Bench at the Principal Seat dated 14.08.2012 in **Income Tax Appeal No.3899 of 2010** (*The Commissioner of*

Income Tax-III Versus M/s Aditya Birla Nova Limited (Successor)). It was thus submitted that no substantial question of law arose in the appeal.

We have heard the learned counsel for the parties and we have considered the rival submissions. The Commissioner of Income of Income Tax while allowing the appeal preferred by the assessee found that the assessee was a co-operative bank and its share capital was held by various individuals. There was no concealment or furnishing of incorrect particulars by the assessee. The assessee had made a claim for such deduction which was not accepted by the Assessment Officer. On that count, the same did not amount to furnishing of inaccurate particulars so as to attract penalty under Section 271(1)(c) of the said Act. The Tribunal while affirming the order of the Commissioner also found that there was no concealment of income and all necessary facts were duly disclosed by the assessee. There was a *bona fide* belief that the amount in question was an allowable expenditure. It therefore affirmed the order of the Commissioner.

In *Reliance Petroproducts (P) Ltd.* (supra), the Hon'ble Supreme Court considered the meaning of the words 'inaccurate' and 'particulars'. It was held that the same would mean details supplied in the return which was not accurate, not exact or correct and not according to truth or erroneous. Merely making a claim that was not sustainable in law by itself would not amount to furnishing inaccurate particulars regarding the income of the assessee. It further held that merely because the assessee therein had claimed expenditure which claim was not found to be acceptable to the Revenue that would not by itself attract penalty under Section 271(1)(c) of the said Act. Similar view was taken in *Bank of Baroda* (supra) where it was observed that necessary entries having made in the profit & loss account there would not be any reason to hold against the assessee.

The decision of the Hon'ble Supreme Court in *Reliance Petroproducts (P) Ltd.* (supra) has been considered by the Delhi High Court in *Zoom Communications* (supra). In the facts of that case it was found that if the claim as made besides being incorrect in law was *mala fide* then the first explanation to Section 271(1)(c) of the said Act would come into play. The facts of the present case however do not indicate such a situation arising.

It is found that the Tribunal has recorded a finding that the assessee was under a *bona fide* belief that the amount deducted was an allowable expenditure and that there was no concealment of income. There is no material on record to disregard that finding or to hold that the same is perverse. We therefore find that the appeal does not give rise to any substantial question of law. The same is therefore dismissed with no order as to costs.

(N. B. SURYAWANSHI, J.) **(A. S. CHANDURKAR, J.)**

APTE

Rohit Apte

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