

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.01/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. Erumapalayam Primary Agricultural Co-Op. Credit Society Annai Janaki MGR Nagar, Erumapalayam, Salem-636 015.	बनाम/ Vs.	ITO, Ward-1(6), Salem.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAEAS-6676-B		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S. Sridhar (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri ARV Sreenivasan (Addl. CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	27-04-2022
घोषणा की तारीख / Date of Pronouncement	:	05-05-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax (Appeals), NFAC, Delhi [CIT(A)] dated 03.12.2021 in the matter of penalty levied by Ld. AO u/s. 271B of the Act for Rs.112715/- vide order dated 18.03.2020.

2. Upon perusal of penalty order, it could be seen that the assessee filed return of income on 06.01.2016 which was scrutinized u/s 143(3). Since total turnover / gross receipts exceeded the threshold limit of Rs.1 Crore, the assessee was required to get his accounts audited u/s 44AB of the Act and to furnish the audit report before the time limit prescribed which, in this case, was 31.10.2015. Since the accounts were not audited within the time limit, Ld. AO initiated penalty u/s 271B and levied penalty of Rs.1,12,715/-. In the absence of any reasonable explanation forthcoming from the assessee, Ld. CIT(A) confirmed the penalty against which the assessee is in further appeal before us.

3. The Ld. AR pleaded that there was sufficient cause for delay in the audit since the assessee being cooperative society, it was governed by the Tamil Nadu Cooperative Societies Act, 1983 and the relevant rules 1988. For the relevant AY, the accounts of the society could not be audited till the completion of the assessment. Since the delay in the completion of the audit was not due to any fault on the part of the assessee society in view of the fact that the assessee was not in control of the matters relating to the appointment and completion of the audit under the aforesaid Act and Rules. Therefore, this constitutes reasonable cause and the penalty was to be deleted. The Ld. AR further submitted that the last date for filing of return was 31.10.2015 whereas the return was filed with minor delay on 06.01.2016 which was due to the fact that the Final Audit Report audited by the Cooperative departmental Audit got completed only on 31.12.2015. The Ld. AR relied on the decision of this Tribunal in M/s. Pattukkottai Agricultural Producers Cooperative Marketing Society Ltd. as well as the decision of Hon'ble High Court of Madras in **Thanjavur Silk Handloom Weavers Co-**

operative Production & Sales Society Ltd. V/s Union of India (263 ITR 334) to support the submissions. The Ld. DR, on the other hand, justified the penalty on the ground that the same was levied in accordance with law.

4. Having heard rival submissions and after going through the relevant material on record, we concur with the submissions of Ld. AR that there was sufficient cause for late filing of return of income and audit. The assessee was subjected to audit under Tamil Nadu Cooperative Societies Act, 1983 and the relevant rules made thereunder. The matter of appointment of auditor and completion of audit was not in control of the assessee. It could also be noted that the audit was finally completed on 31.12.2015 and the assessee filed return immediately thereafter. The cited case law of Hon'ble High Court of Madras also supports the case of the assessee. Accordingly, we delete the impugned penalty.

5. The appeal stands allowed in terms of our above order.

Order pronounced on 05th May, 2022.

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 05-05-2022
EDN/-

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

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF