

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, माननी यउपाध्यक्ष एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No.152/Chny/2021
निर्धारणवर्ष/Assessment Year: 2015-16

M/s. T P D 101 Uthangarai Milk- v. The Income Tax Officer,
Producers Co-operative Society Ltd., Ward-I,
1, Pondichery Main Road, Krishnagiri.
Uthangarai, Krishnagiri-635 208.
[PAN: AABAT 0377 R]
(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.T.S.Lakshmi-
Venkataraman, FCA
प्रत्यर्थी की ओर से /Respondent by : Mr.P.Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing : 21.06.2022
घोषणाकीतारीख /Date of Pronouncement : 29.06.2022

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 31.03.2021 and pertains to assessment year 2015-16.

2. We find that appeal filed by assessee is barred by limitation for which necessary petition for condonation of delay explaining the reasons for the delay has been filed. The learned counsel submitted that assessee could not file appeal within the time allowed under the Act, therefore, delay may be condoned. Having heard both sides and considered the

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petition filed by the assessee for condonation of delay, we are of the considered view that reasons given by assessee for not filing the appeal within the time allowed under the Act, comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of above appeal is condoned and appeal filed by the assessee is admitted for adjudication.

3. The assessee has raised the following grounds of appeal:

- 1. The order of Commissioner of Income Tax (Appeals),NFAC dated 31.03.2021 is opposed to the facts of the case and is not legally maintainable.*
- 2. The first appellate authority has not considered all the aspects raised in the Written submissions dated 07.01.2021. In the above written submissions it was specifically pointed out that both initiation of penalty proceedings and levy of penalty are barred by limitation in terms of Sec:275 of the Act. further it was submitted that the appellants case is squarely covered by the decision of the Jurisdictional High Court in the Case of P.Senthil Kumar vs PCIT reported in 416 1TR 336.*
- 3. In view of the above grounds and other submissions to be made at the time of Appeal hearing, the order U/s 250 passed by Commissioner of Income Tax (Appeals),NFAC may be cancelled and justice rendered.*

4. The brief facts of the case are that the assessee is a registered Co-operative Society under the Tamil Nadu Co-operative Societies Act, 1983. The assessee had filed its return of income for the AY 2015-16 on 05.03.2016 declaring income of Rs.NIL after claiming deduction u/s.80P(2) of Income Tax Act, 1961 (in short "the Act"), amounting to Rs.4,62,022/-. The assessment has been completed u/s.143(3) of the Act, dated 01.11.2017 and determined total income at Rs.7,18,943/-. Thereafter, the AO initiated penalty proceedings u/s.271B of the Act, for belated filing of tax audit report as prescribed u/s.44AB of the Act. The assessee carried the matter before the first appellate authority, but could

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not succeed. The Id.CIT(A) for the reasons stated in his appellate order dated 31.03.2021 sustained penalty levied by the AO on the ground that the reasons sought to be given for default was not backed by any evidence and thus, no reasonable cause within the meaning of Sec.273B of the Act, could be established.

5. The Id.AR for the assessee submitted that the Commissioner of Income Tax(A), NFAC, is erred in sustained penalty levied u/s.271B of the Act, without appreciating the fact that the assessee could not file tax audit report as required u/s.44AB of the Act, within due date for the reasons beyond its control, because, the audit of accounts of the society was carried out by the Department of Co-operative Audit, Government of Tamil Nadu, and such audit was completed in March, 2016 and immediately, the assessee has filed tax audit report on 05.03.2016 before the assessment was completed u/s.143(3) of the Act. The Id.AR further submitted that the delay in getting timely audit report from the Department of Cooperative Audit, is not in the hands of the assessee and thus, when tax audit report was made available with the AO before completion of assessment, the question of levy of penalty u/s.271B of the Act, does not arise.

6. The Id.DR on the other hand, supporting the order of the CIT submitted that reasons given by the assessee does not come under reasonable cause as provided u/s.273B of the Act, and thus, there is no

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error in the findings of the CIT(A) to sustain penalty levied u/s.271B of the Act.

7. We have heard both the parties and perused the materials available on record and gone through the orders of the authorities below. The assessee supposed to have been filed audit report as required u/s.44AB of the Act, on or before 31.10.2015. However, such audit report has been filed on 05.03.2016, which is before the date of completion of assessment proceedings u/s.143(3) of the Act. In other words, although the assessee has filed tax audit report beyond the stipulated period, but such tax audit report was made available to the AO before he completes assessment proceedings. The assessee has given reasons for delay in filing tax audit report. As per which, the audit of accounts of society done by the Dept. of Cooperative Audit, could not be completed on or before 31.10.2015 and said delay was not in the hands of the assessee. Therefore, there is a reasonable cause for not filing the tax audit report within prescribed time limit and thus, penalty cannot be levied. We find merits in the submission of the assessee for the simple reason that non-filing of audit report within the due date is a venial technical breach without any mala fide intention on the part of the assessee. Because, completion of audit of books of accounts of the society is under the control of Dept. of Cooperative Audit and thus, unless the Dept. of Cooperative Audit completes audit, the assessee cannot file return of income along with tax audit report. Therefore, we are of the considered view that reasons given by the

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assessee for not filing tax audit report prescribed u/s.44AB of the Act, is neither intention nor any mala fide intention, but it is venial technical breach and for this reason, penalty u/s.271B of the Act, cannot be levied. This principle is supported by the decision of the Hon'ble jurisdictional High Court in the case of P.Senthil Kumar v. PCIT reported in 416 ITR 336, where an identical issue had been considered by the Court and held that for venial technical breach without any mala fide intention, penalty cannot be levied. The ITAT Cochin Bench in ITA No.411/Cochin/2018 vide order dated 05.02.2019 had held that once audit report has been made available before the AO, when the assessment proceedings were completed, then, there is no reason for levy of penalty.

8. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that reasons given by the assessee for not filing tax audit report within due date comes under reasonable cause as provided u/s.271B of the Act, and thus, the AO is erred in levying penalty u/s.271B of the Act. Hence, we direct the AO to delete penalty levied u/s.271B of Act.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 29th day of June, 2022, in Chennai.

Sd/-
(महावीरसिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(जी.मंजूनाथा)
(G. MANJUNATHA)
लेखासदस्य /ACCOUNTANT MEMBER

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चेन्नई/Chennai,
दिनांक/Dated: 29th June, 2022.
TLN

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF