

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.67/Coch/2022 : Asst.Year 2016-2017

Thammanam Service Co-operative Society Limited, Thammanam PO Ernakulam – 682 032. PAN : AACAT5098E.	v.	The Income Tax Officer Non Corporate Ward 1(5) Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.Amaljith P.J., CA
Respondent by : Smt.J.M.Jamunna Devi, Sr.DR

Date of Hearing : 29.06.2022	Date of Pronouncement : 30.06.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 16.12.2021. The relevant assessment year is 2016-2017.

2. The solitary issue raised is whether the CIT(A) is justified in confirming the penalty imposed u/s 271B of the I.T.Act, amounting to Rs.1,50,000.

3. The brief facts of the case are as follows:

The assessee is a co-operative society. For the assessment year 2016-2017, since the audit report as envisaged u/s 44AB of the I.T.Act was not filed within the prescribed time limited, the Assessing Officer levied penalty of Rs.1,50,000 u/s 271B of the I.T.Act. The view taken by the A.O. was confirmed by the CIT(A).

4. Aggrieved, the assessee has filed the present appeal before the Tribunal, raising following grounds:-

“1. Penalty for not submitting the audit report is erroneous. The tax audit report was furnished before filing the return of income. The assessment was completed considering the audit report. Hon’ble ITAT Cochin Bench has held that in cases where the tax audit report is filed before the completion of assessment, penalty u/s 271B shall not be imposed.

2. Penalty u/s 271B is applicable for (1) failure to get accounts audited; or (2) failure to furnish report of such audit. The scope of section 271B cannot be expanded for non-compliance of section 44AB. Penalty u/s 271B cannot be imposed for not completing the audit or not furnishing the report in time.

3. The appellant craves leave to add, amend, alter, vary and / or withdraw any or all the above grounds of appeal.”

5. The learned AR relied on the order of the Cochin Bench of the Tribunal in the case of T.T.Kuruvilla v. ACIT in ITA No.504/Coch/2018 (order dated 22.01.2019).

6. The learned Departmental Representative supported the order of the CIT(A).

7. We have heard rival submissions and perused the material on record. In the instant case, the audit report was filed along with the return on 08.11.2017 much prior to the issue of statutory notices or completion of assessment order. The assessment was completed considering the audit report. The Cochin Bench of the Tribunal in the case of T.T.Kuruvilla v. ACIT (supra) had held that when tax audit report was furnished along with the return of income and it was available for the A.O. during the course of assessment proceedings, there was no loss caused to the Revenue. Hence, it was

concluded by the Tribunal that it was only technical venial breach and penalty should not be imposed. The relevant finding of the Cochin Bench of the Tribunal in the case of T.T.Kuruvilla v. ACIT (supra) reads as follows:-

“7.1 From the material available on record, we are of the view that the assessee got his books of accounts audited on 25/01/2014 which was made available to the Assessing Officer and no prejudice has been caused to the Revenue. Now the short question that arises is whether in this scenario, penalty u/s. 271B of the Act can be levied or not. In our considered opinion, the assessee had only committed technical venial breach which created any loss to the exchequer as the audit report was available to the Assessing Officer before the completion of the assessment proceedings. The Madras High Court in the case of CIT vs. A.N. Arunachalam (208 ITR 481) in the context of filing of audit report for claiming deduction u/s. 80J of the Act, observed that once audit report has been made available before the Ld. Assessing Officer before the completion of assessment proceedings, the assessee should be granted deduction u/s. 80J of the Act. We observe that this judgment was rendered in the context of adjudication of quantum of deduction claimed by the assessee. Hence, the said analogy can very well be drawn and used in the penalty proceedings like that of the assessee. To sum up, we hold that the assessee had committed only technical venial breach for which he cannot be penalized. In view of the above, we are inclined to delete the penalty made by the assessee u/s. 271B of the Act.”

7.1 In view of the aforesaid reasoning and the order of the Cochin Bench of the Tribunal in the case of T.T.Kuruvilla v. ACIT (supra), we delete the penalty imposed u/s 271B of the I.T.Act amounting to Rs.1,50,000. It is ordered accordingly.

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

Order pronounced on this 30th day of June, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Kochi ; Dated : 30th June, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A) NFAC, Delhi
4. The CIT, Cochin.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin