

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

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

ITA No.32/Coch/2021 : Asst.Year 2015-2016

&

SA No.37/Coch/2021

M/s.Peroorkada Service Co-operative Bank Limited No.1412 Peroorkada PO Trivandrum – 695 005. PAN : AAAAP3974B.	v.	The Income Tax Officer Ward 2(1) Thiruvananthapuram.
(Appellant)		(Respondent)

Appellant by : Sri.Amaljit P.J., CA

Respondent by : Smt.J.M.Jamunna Devi, Sr.DR

Date of Hearing : 28.06.2022	Date of Pronouncement : 29.06.2022
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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 04.03.2021. The assessee has also preferred a stay petition. The relevant assessment year is 2015-2016.

2. The grounds raised read as follows:-

“A. 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 duly considering the audit report.

B. Penalty u/s Section 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. The appellant got its accounts audited and filed the audit report as per Section 44AA, read with Rule 6F books of accounts to be maintained by different class of business are prescribed. Section 44AA

and Rule 6F is silent about the books of accounts need to be maintained by the appellant. When books of accounts itself are not prescribed levy of penalty for not getting the accounts audited is not valid. This view was expressed by Honourable ITAT Cochin Bench in the case of K.V Ramachandran vs. DCIT Circle 1(1) Kannur. 2013 58 SOT 264 (Cochin Trib).

C. The Assessing Officer erred in not considering the reasonable cause for not furnishing the audit report in time. The penalty proceedings is time barred by limitation.

D. The assessing officer erred in not obtaining the prior approval of the Joint Commissioner.

E. Assessing officer erred in imposing penalty u/s 27 18 for filing the audit report in Form 3CB instead of 3CA”.

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

The assessee is a co-operative society. For the assessment year 2015-2016, the return of income was filed on 22.03.2016 along with audit report u/s 44AB of the I.T.Act in Form 3CB and 3CD. Since the audit report was not filed within the prescribed time, notice for imposition of penalty u/s 271B of the I.T.Act was issued. The assessee submitted its reply on 21.06.2019 and 29.11.2019. The submissions of the assessee was rejected and the A.O. imposed penalty vide order dated 10.12.2019 u/s 271B of the I.T.Act amounting to Rs.1,50,000 for the reason that audit report filed was in Form 3CB instead of Form 3CA and that it was filed belatedly.

4. Aggrieved by the order of penalty u/s 271B of the I.T.Act, the assessee preferred appeal before the first appellate authority. The CIT(A) rejected the appeal of the assessee. The CIT(A) relied on the ITAT order in assessee's own case for

assessment year 2014-2015, wherein penalty u/s 271B of the I.T.Act was affirmed.

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned AR submitted that the facts pertaining to the ITAT's order in assessee's own case for assessment year 2014-2015 is not identical, since for the said assessment year, the assessee has done only statutory audit under the Kerala Co-operative Societies Act and tax audit by the Chartered Accountant was not done, whereas, for the relevant assessment year, tax audit by the CA also was done, and therefore, the ratio of the decision in assessment year 2014-2015 cannot be applied for the year under consideration. The learned AR further submitted that non-submission of audit report in Form 3CA / 3CD is only a technical venial error on the part of the Auditor and does not have serious impact on the audit or contents of the report. The learned AR relied on the Cochin Bench order of 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 relied on the orders of the AO and the CIT(A).

7. We have heard rival submissions and perused the material on record. The A.O. as well as the CIT(A) has relied on the ITAT's order in assessee's own case for assessment year 2014-2015 for the imposition of penalty u/s 271B of the I.T.Act. The facts pertaining to the ITAT's order for assessee's

own case for assessment year 2014-2015 is distinguishable. In the above said assessment year, the assessee had only done statutory audit under the Kerala Co-operative Societies Act and tax audit by the Chartered Accountant was not done at all, whereas, for the relevant assessment year, the tax audit was done by the Chartered Accountant also. Moreover, in the instant case, the audit report u/s 44AB was filed along with return of income much prior to the assessment was completed.

7.1 As regards the A.O.'s contention that assessee was supposed to file Form 3CA / Form 3CD and the assessee has filed audit report in Form 3CB / 3CD is also immaterial. Since the only difference between Form 3CA and 3CB is that in Form 3CA statutory audit is general by the person other than tax auditor, whereas in the case of Form 3CB, statutory auditor and the tax auditor are the same. It is only a technical venial error on the part of the auditor, which does not have serious impact on the audit or the contents of the report. Moreover, the tax audit report in Form 3CA is not mandatory. As per the 2nd proviso to section 44AB of the I.T.Act, it is an option given to the assessee if their accounts are audited under any other law.

7.2 The Cochin Bench of the Tribunal in the case of T.T.Kuruvila v. ACIT (supra) had held that if the tax audit was completed and 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 held by the Tribunal that penalty

should not be imposed. The relevant finding of the Cochin Bench of the Tribunal in the case of T.T.Kuruvila 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.”

7.3 In view of the aforesaid reasoning and the order of the Tribunal in the case of T.T.Kuruvila 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.

SA No.37/Coch/2021

8. Since we have disposed of the appeal, the stay application becomes infructuous and the same is dismissed.

9. In the result, the appeal filed by the assessee is allowed and the stay application is dismissed.

Order pronounced on this 29th day of June, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Kochi ; Dated : 29th 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