

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI**  
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
**Before Shri V. Durga Rao, Judicial Member &  
Shri Manoj Kumar Aggarwal, Accountant Member**

आयकर अपील सं./I.T.A. No.1092/Chny/2022  
निर्धारण वर्ष/Assessment Year: 2017-18

M/s. S 1129 Erumapalayam Primary  
Agricultural Co-op. Credit Society,  
Annai Janaki MGR Nagar,  
Erumapalayam, Salem 636 015.

Vs. The Income Tax Officer,  
National Faceless Assessment  
Centre, New Delhi.

**[PAN:AAEAS6676B]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : None  
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT  
सुनवाई की तारीख/ Date of hearing : 23.01.2023  
घोषणा की तारीख /Date of Pronouncement : 31.01.2023

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) (National Faceless Appeal Centre), Delhi dated 02.12.2022 relevant to the assessment year 2017-18.

2. Brief facts of the case are that the assessee has filed his return of income on 15.03.2018 for the assessment year 2017-18 declaring

NIL income after claiming deduction under section 80P of the Income Tax Act, 1961 [“Act” in short] of ₹.13,26,369/-. The case was selected for scrutiny under CASS and notice under section 143(2) of the Act dated 08.08.2018 was issued. After considering the submissions of the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 02.12.2019 by disallowing the deduction claimed under section 80P of the Act.

3. Subsequently, the Assessing Officer initiated penalty proceedings under section 271B of the Act for late filing of audit report under section 44AB of the Act. Since the turnover/sales of the assessee for the year under consideration was ₹.1,83,33,663/-, which exceed the limit of ₹. One crore, the assessee was required to get their accounts audited and liable to file the tax audit report as required under section 44AB of the Act before the due date. Since the assessee has not filed the tax audit report within due date and in view of the provisions of section 271B of the Act, the Assessing Officer levied minimum penalty of ₹.91,668/-. On appeal, the Id. CIT(A) (NFAC) confirmed the penalty levied under section 271B of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal.

None appeared on behalf of the assessee and hence we proceed to decide the appeal on merits after hearing the Id. DR.

5. We have heard the Id. DR, perused the materials available on record and gone through the orders of authorities below. In the penalty order, the Assessing Officer had noted that the assessee's total turnover/sales in the year under consideration were to the tune of ₹.1,83,33,663/- and since the receipts were above the threshold of ₹.1 crore, the assessee was required to get his accounts audited under section 44AB of the Act. Since the assessee has not filed the tax audit report under section 44AB of the Act before the due date, the Assessing Officer levied penalty of ₹.91,668/- under section 271B of the Act, which was confirmed by the Id. CIT(A)(NFAC). Before us, in the grounds of appeal, the assessee has relied upon the decision of the Tribunal in assessee's own case and prayed for following the same.

5.1 Similar issue on an identical fact was subject matter in appeal before this Tribunal in assessee's own case for the assessment year 2015-16 in I.T.A. No. 1/Chny/2022 dated 05.05.2022, wherein, the Tribunal has observed and held as under:

*“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 Cooperative 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."*

6. Respectfully following the above decision of the Coordinate Benches of the Tribunal in assessee's own case for the assessment year 2015-16, we are of the considered opinion that it is not a fit case for the

levy of penalty under section 271B of the Act and accordingly, the penalty levied stands deleted.

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

Order pronounced on 31<sup>st</sup> January, 2023 at Chennai.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 31.01.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy 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.