

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.95/Coch/2022
Assessment Year : 2016-17

M/s. Karimthottuva Service Co-operative Bank Ltd., No.2594, Kunnathur East, Sasthamkotta, Kollam – 690 540. PAN : AAAAK 9696 D	Vs.	ITO, Ward – 2, Kollam.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Anil D Nair, Advocate
Revenue by	:	Smt. J M Jamuna Devi, Sr DR

Date of hearing	:	07.12.2022
Date of Pronouncement	:	19.12.2022

ORDER

Per Padmavathy S, Accountant Member

This appeal is against the order of CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 28.12.2021, for the Assessment Year 2016-17.

2. The assessee is a Co-operative Bank engaged in the business of banking activity and also providing credit facilities to its members. During the year under consideration the assessee has received the interest income of Rs.3,92,22,463. The assessee had not filed the return of income for the year under consideration under section 139 of the Income Tax Act, 1961 (hereinafter called 'the Act') and therefore a notice u/s.142(1) was issued. In response to the same the assessee filed the return of income on 31.03.2018 declaring NIL income along with the audit report dated 31.03.2018. The AO initiated penalty proceedings under section 271B of the Act for the reason that the assessee has not filed the audit report within the time allowed u/s.44AB of the Act. The assessee submitted that it was under a bonafide belief that there is no requirement to file the return of income and audit report since the assessee's income is NIL post the deduction u/s.80P which the assessee is entitled to being a Primary Agricultural credit Society. The assessee also submitted that the internal auditors did not provide proper professional advice due to which the accounts were audited u/s.44AB only post the receipt of notice from the department. The assessee further submitted that the return along with the audit report in response to notice u/s.142(1) and there is no intentional delay on the part of the assessee.

3. The AO held that the assessee is not entitled for deduction u/s.80P as held in the assessment order passed u/s.143(3) and therefore total income being NIL cannot be accepted as a reason for not getting the accounts audited u/s.44AB. The AO further held that it

is the turnover of the assessee that needs to be considered for the purpose of section 44AB and not the taxable income. With regard to the contention that there was no proper professional advise, the AO held that the accounts of the assessee being a cooperative bank is subject to audit by the Kerala State Cooperation Department and for the year under consideration the assessee has obtained audit report dated 10.08.2016. It is contended by the AO that it is the tax audit report u/s.44AB which the assessee failed to obtain on time and therefore lack of professional advice cannot be accepted. The AO did not accept the submissions that the delay is not intentional and for the reason beyond the control of the assessee. Accordingly the AO levied a penalty of Rs.1,50,000 u/s.271B of the Act.

4. The assessee preferred an appeal before the CIT(A). The CIT(A) held that the reason mentioned by the appellant does not constitute a "reasonable cause" and accordingly upheld the order of the AO.

5. Before us, learned AR reiterated the submissions made before the lower authorities. Learned AR also submitted the assessee was required to get the accounts audited by the Registrar of Co-operative Societies as per the provisions of Kerala Co-operative Societies Act, 1969 and therefore getting the same accounts audited u/s.44AB would not have been an issue for the assessee. The assessee's was genuinely under the belief that the accounts are not required to be audited under the Act. Once the assessee came to know the requirement by notice issued u/s.142(1), the assessee complied with the requirement

immediately. It is the submission of the learned AR that from these facts it should be clear that the delay was not intentional and the audit report was filed once required by the authorities.

6. We heard the rival submissions and perused the material on record. The lower authorities have levied penalty under section 271B of the Act on the ground that the assessee failed to furnish the audit report within the time and the failure was voluntary and intentional. We notice that the coordinate bench in the case of T T Kuruvilla vs ACIT (ITA No504/Coch/2018) has considered a similar issue and held that filing of the audit report though delayed before the completion of assessment is only a technical venial breach and that the assessee cannot be penalized for the same. The coordinate bench in this case has relied on the decision of Hon'ble Madras High Court in the case of CIT vs A N Arunachalam (2018 ITR 481)

7. The assessee being a Co-operative Society is required to get the accounts audited by the Registrar of Co-operative Societies as per the provisions of Kerala Co Operative Society Act, 1969 and the year under consideration is the first year in which the assessee is required to get the accounts audited u/s.44AB. It is an undisputed fact that the assessee has got its accounts audited and filed the same along with the return of income in response to a notice u/s.142(1). It is also noticed that the AO has completed the assessment taking cognizance of the same and there was no difficulty caused to the AO for want of audit report while completing the assessment. Therefore, in our considered view by not getting the accounts audited in time, the assessee has

committed only a technical or venial breach of the provisions of the Act that has not resulted in any loss to the revenue. Nevertheless it is also submitted that the denial of deduction u/s.80P has been remanded to the AO during the appellate proceedings. In view of the facts and circumstances of the case we are of the view that the delay is not intentional that has not caused any adverse effect to the exchequer. We therefore delete the penalty levied under section 271B of the Act and allow the appeal in favour of the assessee.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(PADMAVATHY S)
Accountant Member

Bangalore,
Dated: 19.12.2022.
/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Cochin.