

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

**Before Shri George George K., Judicial Member
and**

Ms. Padmavathy S., Accountant Member

ITA Nos. 880 & 881/Coch/2022 (Assessment Years: 2011-12 & 2012-13)		
The Chorode Service Co-op. Bank Ltd. LL 139, Chorode Vadakara 673306 PAN – AAAAT7826N	vs	The Income Tax Officer - 2(2) Aayakar Bhavan Mananchira Kozhikode 673001
(Appellant)		(Respondent)

Assessee by:	Shri Narayanan V.S.
Revenue by:	Smt. J.M. Jamuna Devi, Sr. DR

Date of hearing:	02.03.2023
Date of pronouncement:	08 .03.2023

ORDER

Per: George George K., J.M.

These appeals at the instance of the assessee are directed against two orders of the CIT(A)/NFAC, Delhi both dated 23.06.2022 passed under Section 250 of the Income Tax Act, 1961 (the Act). The relevant assessment years are 2011-12 & 2012-13.

2. There is a delay of 6 days in filing these appeals. The assessee has filed condonation petition and also affidavit of the Secretary of the assessee stating therein the reasons for the belated filing of the appeals. On perusal of the reasons stated in the affidavit we are of the view that there is sufficient cause for late filing of the appeals and no laches can be attributable to the assessee.

Hence, we condone the delay of 6 days and proceed to dispose of the appeal on merits.

3. Common issues are involved in these appeals. Hence, they were heard together and being disposed of by this consolidated order.

4. The solitary issue raised in these appeals is whether the CIT(A) is justified in confirming imposition of penalty under Section 271B of the Act.

5. The brief facts of the case are as follows: -

For assessment years 2011-12 and 2012-13 penalty under Section 271B of the Act was imposed for belated filing of Audit Report under Section 44AB of the Act amounting to Rs.1,50,000/- each for the respective assessment years.

6. Aggrieved, assessee filed appeals before the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer (AO).

7. Aggrieved by the orders of the CIT(A) assessee filed the present appeals before the Tribunal. The learned A.R. submitted that for both the assessment years the Audit Report were filed before the assessment proceedings were completed and the AO has taken note of the same. It was stated that for the venial breach, no penalty should be imposed. For this proposition the assessee relied on the decisions of the order of the Tribunal in case of T. T Kuruvilla vs. ACIT in ITA No.504/Coch/2018 (order dated 22.01.2019)

8. The learned D.R. supported the orders of the AO and the CIT(A).

9. We have heard the rival contentions and perused the material on record. It is an admitted fact that the assessee had filed the Audit Report during the course of assessment proceedings and the AO has taken note of the same. In such a situation the Co-ordinate Bench of Kochi Tribunal in case of

T.T.Kuruvilla vs. ACIT (supra) had held that penalty u/s. 271B of the Act should not be levied. The Co-ordinate Bench followed the judgment of the Hon'ble Madras High Court in case of CIT vs. A.N.Arunachalam reported in 208 ITR 481 (Mad.). In light of the aforesaid order of Tribunal, we deleted the penalties imposed under Section 271B of the Act for both the assessment years.

10. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 08th March, 2023.

Sd/-

(Padmavathy S.)
Accountant Member

Sd/-

(George George K.)
Judicial Member

Cochin, Dated: 08th March, 2023

Copy to:

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

By Order

//True Copy//

Assistant Registrar
ITAT, Cochin

n.p.