

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

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.848/Coch/2022
Assessment Year : 2017-18

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

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

Date of hearing	:	27.02.2023
Date of Pronouncement	:	08.03.2023

**ORDER**

*Per Padmavathy S, Accountant Member*

This appeal is against the order of CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 29.07.2022, for the Assessment Year 2017-18.

2. The assessee is a Co-operative Bank engaged in the business of banking activity and also providing credit facilities to its members. The assessee filed the return of income on 31.03.2018 declaring NIL income after claiming deduction u/s.80P of the Income Tax Act (the Act). The

case was selected for scrutiny under CASS and the AO completed the assessment u/s.143(3) assessing the income of the assessee at Rs.76,60,430. Subsequently The AO initiated penalty proceedings under section 271B of the Act for the reason that though the assessee had income exceeding the limits prescribed u/s.44AB,the assessee got the accounts audited and furnished the audit report belatedly i.e. on 31.03.2018. 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 for AY 2016-17. The assessee further submitted that the return and the audit report in were filed as soon as the assessee came to know of the requirement under the law and that 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 31.08.2017. 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) which was issued for AY 2016-17, the assessee complied with the requirement immediately. It is the submission of the learned AR that from this facts it should be clear that the delay was not intentional and the audit report was filed once required by the authorities. The ld AR further submitted that the coordinate bench of the Tribunal in assessee's own case for AY 2016-17 (ITA

No.95/Coch/2022), has considered the same issue and had deleted the penalty.

6. We heard the rival submissions and perused the material on record. We notice that the coordinate bench in assessee's own case (supra) has considered the issue of levy of penalty u/s.271B for non-filing of audit report u/s.44AB and held that

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.

7. For the year under consideration, the assessee has while filing the return filed the audit report also though belatedly on 31.03.2018. Respectfully following the decision of the coordination bench above, where the Hon'ble Tribunal has held that 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, we delete the penalty levied u/s.271B of the Act for the year under consideration 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 this 8<sup>th</sup> day of March, 2023.

Sd/-

Sd/-

( GEORGE GEORGE K. )  
JUDICIAL MEMBER

( PADMAVATHY S. )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 8<sup>th</sup> March, 2023.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.