

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

BEFORE SHRI SANJAY ARORA, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No. 89/Coch/2023
(निर्धारण वर्ष / Assessment Year: 2013-14)

Space Centre Employees Co-operative Society Ltd. No. T1388 Office Building, Isro Post, Veli, Thiruvananthapuram- 695201.	बनाम/ Vs.	ITO, Ward-2(1), Trivandrum.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

SP. No. 20/Coch/2023
Arising out of ITA. No.89/Coch/2023
(निर्धारण वर्ष / Assessment Year: 2013-14)

Space Centre Employees Co-operative Society Ltd. No. T1388 Office Building, Isro Post, Veli, Thiruvananthapuram- 695201.	बनाम/ Vs.	ITO, Ward-2(1), Trivandrum.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAP1047R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Santhosh P Abraham
Revenue by:	Smt J. M Jamuna Devi, (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 18/05/2023
घोषणा की तारीख /Date of Pronouncement: 06/06/2023

आदेश / ORDER

PER BENCH

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC dated 01.12.2022 for AY. 2013-14. The assessee has also filed Stay Petitions which becomes infructuous, since we are disposing of the appeal on merits.



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2. The grounds of appeal of the assessee reads as under: -

“A. The orders of the assessing officer as well as the appellate authority passed ws 271B and 250 respectively to the extent of objections made herein after, are against the facts and circumstances of the case and is opposed to the provisions of law.

B. The assessing authority went wrong in initiating proceedings u/s 271B for the non-compliance of the third proviso to section 44AB.

C. The appellant is being a Co-operative Society registered under the Kerala Cooperative Society Act is subjected to statutory audit prescribed under the Act during the previous year also the entire accounts are audited by the statutory auditors as prescribed under the Kerala Co-operative Societies Act and issued audit certificate and audit memorandum, which contains the financial consolidation of the transactions made during the year.

D. The appellate authority accepted the finding of the assessing authority without properly considering the contentions advanced by the appellant.

E. The authorities below went wrong in imposing penalty ws 271B on technical grounds, when the statutory audit report is available.”

3. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the action of the AO levying penalty u/s 271B of the Income Tax Act, 1961 (hereinafter “the Act”) for non-compliance of the third proviso to section 44AB of the Act.



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4. Brief facts of the case as noted by the Ld. CIT(A) is that assessee is a Co-operative society engaged in the business of banking activity and also providing credit facilities to its members. The assessee filed its return of income for AY. 2013-14 on 02.08.2017 returning total income of Rs.20,310/-; and the gross turnover of the assessee during the period was to the tune of Rs.3,26,33,407/-. The assessment in this case was completed on 20.12.2018 and since the assessee has not filed the Audit report u/s 44AB of the Act, the AO initiated proceedings u/s 271B of the Act because the assessee didn't furnish the audit report as per section 44AB of the Act and no *reasonable cause* was brought to his notice, he levied penalty u/s 271B of the Act at Rs.1.50 Lakhs. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the same by holding as under: -

“I have gone through the submission furnished by the Appellant. The proviso to section 44 AB categorically states that “ *in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.*” In the case of the appellant which is a Co-operative society, the appellant claims that accounts and balance sheet are being regularly audited by co-operative department auditor appointed by the government of Kerala. However, the appellant had failed to get the report in the prescribed form under the section 44AB.



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As seen from the assessment order in Para 3, appellant had failed to furnish the report as required under section 44AB, in the form No.3CA. In other words, the audit report by the accountant in the prescribed format was not produced by the appellant before the assessing Officer. I am of the considered opinion that non production of audit report in the prescribed format can be a reason for levying of penalty u/s 271B of the act and the appellant has not given explanation regarding the reasonable cause for not filling the audit report within the prescribed time limit in prescribed format. Accordingly, the ground raised by the appellant is dismissed and the penalty order is confirmed.”

5. Aggrieved by the action of Ld. CIT(A), the assessee is before us. At the outset, the Ld. DR for the department brought to our notice that the issue (levy of penalty u/s 271B of the Act) is covered against the assessee by order of the Hon’ble Kerala High Court in the case of Peroorkkada Services Co-operative Bank Ltd. Vs. ITO ITA. No. 320 of 2019 dated 07.01.2020 wherein the Hon’ble High Court held as under: -

“6. We heard learned counsel for the appellant Adv. Sri.C.A. Jojo, as well as learned standing counsel appearing for the respondents.

Section 271B of the Act reads as follows:

"271B. Failure to get accounts audited

If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or [furnish a report of such audit as required under section 44AB], the [Assessing] Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of [one hundred fifty thousand rupees], whichever is less." .



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It is evident that, if there is any failure on the part of the assessee to get his accounts audited in respect of any previous year relevant to the assessment year or if the assessee fails to furnish a report of such audit as required under section 44AB, it is liable to be imposed with penalty under that section. Section 273B provides that, no penalty shall be imposed for any failure referred to in section 271B, if the assessee proves that there was 'reasonable cause' for the said failure

7. From the provisions enumerated as above, it is clear and evident that if an assessee is liable to furnish the audited report of his accounts, audited under any other law applicable to him, along with a further report by an Accountant in the prescribed form, within the date stipulated for the said purpose, it will attract penalty under section 271B, subject to provisions contained in section 273B, which is of showing sufficient reasons (reasonable cause). In the case at hand, the appellant had furnished audited financial statement with respect to the year concerned along with a Certificate issued by the Joint Director (Audit) of the Co-operative Department dated 3.7.2018. He has not furnished the report of audit in the prescribed form, Form 3CA, as required under the second proviso (as it stood then) to section 44AB read with the requirements under Rule 6G(1) of the Income-tax Rules.

8. Contention of the appellant herein is that the submission of audited accounts and statement along with the Certificate of the Auditor appointed under the Co-operative Societies Act, as mandated under section 63 of the Co-operative Societies Act, would amount to sufficient compliance of the requirements under the second proviso to section 44AB. His further contention is that the further report by an Accountant, insisted upon in the second proviso, is not a mandatory requirement, because the provision in the Constitution of India itself insists upon for a mandatory audit of the accounts of a Co-operative Society under the Department of the Government concerned. We take note of the fact that, it is a mandatory requirement under section 44AB that the appellant should get its account audited by an Accountant and to furnish before the specified date, the report of such audit in the prescribed form duly signed and verified by such Accountant and by setting forth such particulars as may be prescribed. Form CA is the particular form prescribed for the said purpose.

9. Since the appellant is a person required under the Co-operative Societies Act to get its account audited under that Act, it would be sufficient compliance under the second proviso to section 44AB, if the appellant gets the account of its business audited under the Co-operative Societies Act before the specified date and furnishes that report of audit, along with further report by an Accountant in the form prescribed, before the Assessing Authority under the Income-tax Act, before the date stipulated for the said purpose. It is to be noted that, the further report required by an Accountant need to be furnished in Form 3CD. Evidently the appellant had not furnished the report of the audit under Co-operative Societies Act in the form prescribed, which is Form 3CA. On the other hand, his contention is that the accounts were audited by the Co-



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operative Department and the Joint Director had issued a Certificate to that effect. Probable contention raised by the appellant is that since the appellant is a person required by the Co-operative Societies Act to get its accounts audited under that Act, the audit report need not be filed in Form 3CA. Even assuming (without admitting) that the furnishing of a report of the audit conducted by the competent Auditor stipulated under the Co-operative Societies Act would suffice compliance of the first limb of the second proviso, it is evident that the further report by an Accountant, as mandated to be furnished in Form 3CD, was not furnished by the appellant. Moreover, the factual finding arrived by the Tribunal is to the effect that the appellant had furnished only the Annual Report depicting the audited financial statement along with copy of the receipts and distribution statements. It is also evident that the appellant had furnished a Certificate issued by the Joint Director (Audit) of the Co-operative Department. When the second proviso carves out an exemption from the general provisions of section 44AB, the stipulations therein need to be strictly adhered and the mere fact that the audit of the assessee was conducted under the provisions of the Co-operative Societies Act, would not be sufficient for such compliance. Furnishing of the report of audit in the prescribed form accompanied with a further report by an Accountant in the prescribed form, is a mandatory requirement for proper compliance. Since the appellant had failed to show any 'reasonable cause', coming within the purview of section 273B, the imposition of penalty under section 271B cannot be interfered with.

10. Lastly, learned counsel for the appellant had drawn our attention to a Circular issued by the Central Board of Direct Taxes, Circular No.03/2009, dated 21.5.2009. Based on which it is contended that, the audited report need not be attached along with the returns or furnished separately at any time before or after the due date; but it need only to be retained by the assessee and produced if it is called for by the Income-tax Authority during any proceedings under the Act. The Circular says that no penalty under section 271B shall be initiated or levied for not furnishing the tax audit report before the due date. Therefore, the imposition of penalty under section 271B cannot be sustained, is the contention. We are not persuaded to accept the above contention in view of the mandatory provisions contained in section 44AB, which insists on furnishing of the audit report in the prescribed form before the due date stipulated, along with a further report of an Accountant. When the specific provision contained in the statute is unambiguous in this respect, we cannot hold otherwise based on any circular of the Department. Hence the above contention cannot be accepted. Further, learned Standing Counsel appearing for the respondents contended that, the penalty proceedings in this case was initiated on the allegation that the appellant had failed to obtain a proper audit report within the date stipulated in the relevant provision.



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11. For the reasons mentioned as above, we are of the opinion that, no substantial question of law arises for consideration in challenge against the impugned order of the Tribunal. Accordingly, the above appeal fails and the same is hereby dismissed.

12. All pending interlocutory applications are closed.”

6. We note that in this case, the assessee being a Primary Agricultural Credit Co-operative Society registered under Kerala Co-operative Society Act, 1969 claimed that it is eligible for deduction of its income u/s 80P of the Act. In the year under consideration, i.e. AY 2013-14 assessee had filed its return of income on 2.08.2017 declaring total income of Rs.20,310/-. The case of assessee was selected for scrutiny and the AO noted that assessee’s gross receipt was to the tune of Rs.3,26,33,407/-. And since its turnover/gross-receipt exceeded Rs.1 crores, the AO noted that assessee had to furnish audit report u/s 44AB of the Act within the specified date; in the prescribed format, duly signed and verified by such Accountant by setting forth such particulars as prescribed. And further AO noted that since the assessee being registered under the Co-operative Societies Act 1969, 3rd proviso to section 44AB gets attracted; and it is required by Co-operative Societies Act to get its account audited by the departmental auditor before the specified date; and therefore assessee need to furnish a copy of departmental auditor as well as a further report by an accountant as stipulated u/s 44AB of the Act. However, despite repeated requests/direction from AO, the assessee failed to file the departmental audit & audit report of the accountant as per 3rd proviso to section 44AB of the Act. We note that assessee failed to produce any evidence of filing the audit report [supra] before the Ld. CIT(A) or before us, and the assessee has not been able to give any ‘reasonable cause’ for



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not levying of penalty u/s 271B of the Act for failure to audit its account (supra). So in the light of the decision of the Hon'ble Kerala High Court in the case of Peroorkkada Services Co-operative Bank Ltd (supra), we are inclined to dismiss the appeal of the assessee and confirm the penalty u/s 271B of the Act.

7. In the result, the Appeal and Stay Petition of the assessee stands dismissed.

Order pronounced in the open court on this 06/06/2023.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Cochin; Dated : 06/06/2023.

Vijay Pal Singh, (Sr. PS)

Copy to :

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

Asst. Registrar/ITAT, Cochin