

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

Before Shri Sanjay Arora, AM & Shri Aby T.Varkey, JM

ITA No.29/Coch/2023: Asst.Year 2012-2013
SA No.5/Coch/2023

ITA No.30/Coch/2023: Asst.Year 2017-2018
SA No.6/Coch/2023

Chavakkad Service Co-operative Bank Limited No.4-9991, Beach Road Manathala, Chavakkad Thrissur – 680 506 [PAN: AAAAC5942N]	vs.	The Income Tax Officer Ward 1 & TPS Guruvayoor.
(Appellant/Applicant)		(Respondent)

Appellant / Applicant by: Sri.M.Ramdas, CA
Respondent by: Smt.J.M.Jamuna Devi, Sr. DR

Date of Hearing : 16.05.2023	Date of Pronouncement: 12.06.2023
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ORDER

Per Sanjay Arora, AM:

This is a set of two Appeals by the Assessee, a co-operative society registered as a Primary Agricultural Credit Society (PACS) under the Kerala Co-operative Societies Act, 1969 ('Kerala Act'), directed against the confirmation of penalty under section 271B of the Income-tax Act, 1961 ('the Act' hereinafter) vide separate orders dated 24.01.2022 for assessment years (AYs.) 2012-2013 and 2017-2018, vide, again, separate orders of even date, i.e., 18.11.2022. The facts and circumstances of both the appeals being largely common, the same were posted for hearing together and, accordingly, heard together.

2. The background facts of the case are that assessments for both the years were made denying the assessee the benefit of deduction u/s. 80P(2)(a)(i) of the Act following the decision by the Hon'ble jurisdictional High Court in *Pr.CIT v. Poonjar Service Co-op. Bank Ltd.* [2019] 414 ITR 67 (Ker)(FB), relying, among others, on the decision in *The Citizen Co-operative Society Ltd. v. Asst. CIT* [2017] 397 ITR 1 (SC). It read the legislative intent of sec.80P(4), as inserted on the statute by the Finance Act, 2006 w.e.f. 01.04.2007, to deny the deduction u/s.80P to co-operative banks, i.e., other than PACS and Primary Co-operative Agricultural and Rural Development Banks (PCARDB). A PACS, by definition, and as explained by it in *Muhammed Usman v. Registrar of Co-operative Societies*, AIR 2003 Kerala 229 (2003) 116 Com. Cases 505 (Ker.), is a society which provides financial accommodation only to its members and that too for agricultural and allied purposes. The deduction u/s.80P(2)(a)(i), claimed at nearly the whole of its total income of Rs.40,78,034 (AY 2012-2013) and Rs.66,94,596 (AY 2017-2018), was accordingly restricted to the income arising from the activity of providing credit to its members for agricultural and allied purposes. The assessee having not furnished the audit report before the specified date, as required by sec.44AB, penalty proceedings u/s.271B, for non-compliance therewith, were initiated, and penalty levied at Rs.1.50 lakh, being lower than 0.5% of the turnover. The tax audit report for the two years under reference being furnished on 24.4.2019 (i.e., along with the return of income furnished in response to notice u/s.148 dated 29.3.2019 (AY 2012-2013), and on 26.3.2018 (AY 2017-2018), i.e., much beyond the specified date, being 30.09.2012 and 30.09.2017 for the two successive years respectively, penalty proceedings u/s.271B were initiated. The same being confirmed in first appeal, the assessee is in second appeal before us.

3. We have heard the parties, and perused the material on record.

3.1 The assessee's case before us for both the years was that the audit report had been received from the office of the Registrar of Co-operative Societies, Kerala, over which it had no control, much after the specified date, i.e., on 18.7.2013 and

18.12.2017, for AY 2012-2013 and 2017-2018, respectively, and which therefore prevented it from furnishing the same by the specified date u/s.44AB. True, the said report is also, by virtue of third *proviso* to sec.44AB, required to be furnished, i.e., apart from the audit report in the specified form (Form 3CA and Form 3CD) where, as in the instant case, the accounts of the business and profession of the assessee are required to be audited under any other law. There is firstly nothing on record to exhibit the stated dates of receipt of the audit reports under the Kerala Act. Two, even granting so, the said information may not by itself be complete, and would require being supplemented by the date/s of making available the books of account to the Auditor for audit. Delay therein, extent of which is not known, could certainly not be attributed to the Auditor. Be that as it may, there is no explanation for the admitted delay of six years and over six months beyond the stated dates of receipt for the two successive years respectively. Infact, the said explanation would carry weight only where the tax audit report in the prescribed form, duly signed and verified, as required by sec.44AB, had been furnished by the assessee by the specified date, further furnishing the audit report received from the Registrar soon after its receipt in July, 2013 and December, 2017, respectively. *As we see it, the assessee has, for both the years, been oblivious of it's obligation u/s.44AB, filing the audit report only along with the return of income, and which had not been filed by the due date u/s.139(1).* The law has been amended since 01.7.1995, effectively delinking the furnishing of the said report from furnishing the return of income, requiring the assessee to, instead, furnish along with the return of income a proof of furnishing the said report earlier. Inasmuch as we have, for the reasons stated above, found the assessee's explanation not tenable, we do not insist on it furnishing material to bear out its case. Infact, a similar plea, i.e., the delayed receipt of audit report under the Kerala Act, was found not acceptable by the Hon'ble jurisdictional High Court in *Peroorkkada SCB Ltd. v. ITO* [2020] 114 taxmann.com 18 (Ker), to which reference has been made by the Co-ordinate Bench in *Kundayam SCB Ltd. v. ITO* (ITA No.951/Coch/2022, dated 28.04.2023). The Hon'ble High Court found

little merit in pleading compliance of s. 4AB on furnishing only the tax audit report in Form 3CD in view of the delayed receipt of audit report from the office of the Registrar of Societies, stating it to be as much a part of the obligation cast u/s.44AB.

3.2 The argument that the audit reports were available with the AO at the time of assessments, is, neither here nor there. We have already stated of the delinking of the requirement of furnishing the audit report from that of the return of income. It is the non-furnishing of the audit report in time, as opposed to the return of income, that constitutes the default u/s. 44AB, providing for penalty where the same is not shown to be due to a reasonable cause. How the information furnished per an audit report is used by the Revenue is only it's concern. For all we know, the said information may be processed by it to select, on the basis of defined parameters, the returns of income for regular assessment; comparison of the operating parameters between different assesses, et.al. Why, in a given case, it is the audit report that may lead to the discovery that an assessee, who has not furnished a return of income, had taxable income for the relevant year. That is say, the same is an irrelevant consideration as far as the auditee-assessee is concerned.

3.3 Sh. Ramdas would, before us, take another plea *qua* AY 2012-2013, i.e., that the notice u/s.271B r.w.s. 274 was issued only on 19.11.2019, i.e., much after the end of the relevant assessment year, questioning thus the validity of the said notice on the basis of the time of its issue. We find no such restriction either u/s.271B or u/s.274. That apart, notice for the said year was issued only on the conclusion of the assessment u/s.147 r.w.s. 143(3) on 19.11.2019, as we find the case to befor AY 2017-2018. That is, for both the years,s.274 notice stands issued within a reasonable time of the conclusion of the assessment proceedings. The assessee may not have filed the return for a particular year, as infact is the case for AY 2012-2013, so that the fact of non-furnishing the audit report u/s.44AB would not come to the notice of the Revenue. It is presumably for such like reasons that the Legislature had deemed it fit not to prescribe any time limitation for the issue of the said notice. Once commenced, the proceedings though are to be concluded within prescribed time.

5. In view of the foregoing, we find the assessee's case as without merit and, accordingly, decline interference.

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6. Since we have decided both the appeals, the stay petitions are rendered infructuous and, accordingly, are dismissed as such.

7. In the result, the assessee's appeals are dismissed.

Order pronounced on June 12, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(AbyT.Varkey)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin; Dated: June 12, 2023
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(Appeals), NFAC, Delhi
4. The Pr. CIT concerned.
5. The Sr. DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar
ITAT, Cochin