

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

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

ITA No.31/Coch/2023: Asst. Year:2017-2018

&

SA No.7/Coch/2023

Elavally Service Co-operative Bank Limited, No.372 Vakra P.O. Thrissur-680602. [PAN: AAAAE3099E]	vs.	The Income Tax Officer Ward 1 & TPS Guruvayur.
(Appellant)		(Respondent)

Appellant by: Sri.Ramdas, CA

Respondent by: Smt.J.M.Jamuna Devi, Sr. DR

Date of Hearing : 16.05.2023	Date of Pronouncement: 30.06.2023
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ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the Order dated 06.12.2022 by the National Faceless Appeal Centre, Delhi [Commissioner of Income-tax (Appeals), for short], confirming the levy of penalty under section 271B of the Income-tax Act, 1961 ('the Act') for assessment year (AY) 2017-2018 vide order dated 23.8.2021.

2. The brief, background facts of the case, to the extent relevant, are that the assessee, a cooperative society, did not file its return of income for the relevant year u/s. 139(1) of the Act, and did so only on 04.4.2018 in response to notice u/s. 142(1) dated 15/01/2018, returning 'nil' income, as the total income of Rs.8,53,592 was claimed deductible u/s. 80P of the Act. Notice u/s. 274 r/w.s. 271B, for failure to furnish the audit report in terms of section 44AB of the Act, i.e., within the time specified u/s.139(1), being 30.9.2017, was issued. The assessee explained its nil taxable income, as borne out by its return; the entire income being exigible to deduction u/s. 80P(2)(a)(i) as the reason. The same was found not tenable, and

penalty u/s. 271B levied at Rs. 1.50 lakhs, being lower than 0.5% of the reported turnover of Rs.324.94 lakhs. In appeal, the assessee, apart from reiterating its tax-exempt status as a primary agricultural credit society (PACS), for which it relied on the decision in *Mavilayi Service Cooperative Bank Ltd. v. CIT* [2021] 431 ITR 1 (SC), claimed delayed receipt of audit report from the Joint Registrar of Cooperative Societies, i.e., on 15.02.2018, as the reason. This, thus, constituted a reasonable cause within the meaning of sec. 273B of the Act, saving penalty, for which it relied on *CIT v. Malayalam Plantation Ltd.* [1976] 103 ITR 835 (Ker). The same, in the opinion of the Id. CIT(A), did not constitute a reasonable cause, relying for the purpose on *Azadi Bachao Andolan vs. Union of India*[2001] 252 ITR 471 (Del). Aggrieved, the assessee is in second appeal.

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

3.1 *A reasonable cause is essentially and principally a matter of fact.* As such, where proved, the burden of which is on the assessee, the same shall exclude levy of penalty u/s. 271B of the Act. The assessee before the assessing authority, i.e., the authority levying the impugned penalty, explained an absence of taxable income as the reason for not furnishing the tax audit report, as required u/s. 44AB, and which failure, without reasonable cause, is liable to be visited with a penalty u/s. 271B of the Act. The same may be a valid reason for non-furnishing the return of income for the relevant year, but furnishes no ground for non-filing of the audit report, as required u/s. 44AB, which bears no exception in this regard. Even as noted by the Tribunal in *Chavakkad SCB Ltd. v. ITO* (ITA Nos. 29 & 30/Coch/2023, dated 12.06.2023), the requirement of filing the tax audit report stands decoupled from that of filing the return of income by Finance Act, 1995, w.e.f. 01.07.1995, also explaining as without merit the argument of the audit report being available before the Assessing Officer (AO) at the time of assessment, as under: -

‘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 its 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.'

Why, for all we know, the return of income for the relevant year may not be subject to regular assessment? In the facts of the case, the same is in fact a false claim as the decision in *Mavilayi SCB Ltd.* (supra), rendered on 12.01.2021, was not available at the time. The decision ruling at the time was in *Perinthalmanna SCB Ltd. v. ITO* [2014] 363 ITR 268 (Ker); the later decision in *Chirakkal SCB Ltd. v. CIT* [2016] 384 ITR 490 (Ker) being rendered without reference to the former, as indeed to *Antony Pattukulangara v. E.N. Appukuttan Nair* [2012] 3 KHC 726 (Ker), as noted in *Pr. CIT v. Poonjar SCBLtd.* [2019] 414 ITR 67 (Ker)(FB).

3.2 As regards the assessee's second plea, the same is, again, not tenable, even as it ought to have been, properly speaking, advanced before the authority levying penalty, and is in the nature of an afterthought. As again explained in *Chavakkad SCB Ltd.* (supra), the argument to be valid, apart from being substantiated, ought to be also specify the date on which the books of account were made available to the Auditor for audit. This is as any delay in doing so cannot, after all, be attributed to the latter (i.e., the Jt. Registrar of Cooperative Societies). Further still, there is nothing to show, nor even a contention to the effect that the assessee had duly furnished the audit report from the Accountant in the prescribed form and, further, within the specified time. It is only, where so, coupled with the filing of the audit report of the Jt. Registrar soon after its receipt on 15.02.2018, that the assessee can claim of having been prevented by a reasonable cause. This is as the report from the Jt. Registrar is, in terms of sec. 44AB, required to be filed in addition to that by the

Accountant in the prescribed forms (3CA & 3CD). As it appears to us, it is only on receipt of notice dated 15.01.2018, that the assessee got proactively engaged in, firstly, obtaining the audit report from the Jt. Registrar, if not also from the Chartered Accountant; it being of the view that the same is not required to be filed in the absence of any taxable income for the relevant year. Such explanation, we may also add, did not find favour with the Hon'ble Court in *Peroorkkada SCB Ltd. v. ITO*[2020] 114 taxmann.com 18 (Ker).

3.3 The reliance on *Malayalam Plantation Ltd.* (supra) before the Id. CIT(A) is wholly misplaced in the instant case, which concerns establishing a reasonable cause, which the assessee has abysmally failed to. In that case, a certificate from the Tea Board, required for a claim u/s. 33A, was not, as required, furnished along with the return of income, but only later during the assessment proceedings. The Hon'ble Court, on an examination of the provision and the relevant rule, interpreted the word 'shall' occurring therein to not signify a mandatory intent, as being understood by the Revenue. As afore-explained, the levy of penalty u/s. 271B is independent of the filing of the return of income and, by extension, of the assessment proceedings.

4. The assessee's case, for the reasons afore-stated, cannot be accepted, and we, accordingly, decline interference. The assessee's stay petition, filed in respect of its instant appeal, since disposed, becomes infructuous. We decide accordingly.

5. In the result, the assessee's appeal is dismissed and the stay application is dismissed as not maintainable.

Order pronounced on June 30, 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 30, 2023

n.p.

Copy to:

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