

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

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 56/Coch/2023
(Assessment Year: 2017-18)

Kayamkulam Co- operative Bank Ltd. Palace Road, Krishanpuram Kayamkulam 690533 PAN – AABAK5868L (Appellant)	vs.	The Income Tax Officer Ward – 1, Alappuzha (Respondent)
---	-----	---

Appellant by: Sh. Bijuman Antony, CA
Respondent by: Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing: 10.07.2023
Date of Pronouncement: 31.07.2023

ORDER

Per:Sanjay Arora, AM

This is an Appeal by Assessee agitating the confirmation of penalty under section 271B of the Income Tax Act, 1961 ('the Act') levied vide order dated 14.01.2022 for Assessment Year (AY) 2017-18 by the National Faceless Appeal Centre (NFAC), Delhi ('CIT(A)') vide order dated 23.11.2022.

2. The assessee, a co-operative bank registered under the Kerala Cooperative Societies Act, 1969, filed its return of income disclosing a turnover of Rs.12.87 crores, on 29.03.2018, furnishing along with the Tax Audit Report (TAR) in Form 3CA. The said report was, in terms of section 44AB of the Act, required to be filed by the due date of furnishing the return of income as specified u/s.139(1) of the Act, i.e., by 30.9.2017. This was observed during the course of assessment proceedings, which culminated in the assessment u/s. 143(3) of the Act dated 23.12.2019, and the assessee,

accordingly, show caused under section 271B r/ws. 274, i.e., for violation of section 44AB, vide notice dated 30.12.2019. The assessee explained the receipt of audit report from the Cooperative Auditor in March, 2008 as the reason, which was found not valid by the Assessing Officer (AO) as the same did not explain the late filing of Tax Audit Report in Form 3CA, i.e., from the Tax Auditor. The filing of the TAR is independent of the filing of the return of income. The assessee reiterated it's case in first appeal, whereby it was observed that the assessee had not furnished the requisite details, much less substantiating the same, viz. the date on which the Cooperative Auditor signed the report; the date on which the said report was filed with the Revenue inasmuch as the same was, equally, i.e., vide *proviso* thereto, required to be filed under section 44AB of the Act. The penalty levied was accordingly confirmed, against which the assessee is in second appeal.

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

There is nothing on record to exhibit the date on which the TAR was obtained by the assessee-bank, filed by it along with the return of income on 29.3.2018, even as the law requires it to be obtained and furnished by the date specified u/s.139(1) for furnishing the return of income, i.e., latest by 31.10.2019 (for that year), much less explain the delay in furnishing the same. No clear reply in this regard was also furnished by Sh. Antony, the assessee's counsel, during the hearing, who would rather admit to the statutory audit report from the Registrar of Societies, which is also to be filed by the date specified u/s. 44-AB, to have been not furnished at all. The record (PB-1) shows the same to have been obtained on 26.2.2018. The question of explaining the delay by the assessee would arise only where it is furnished with a delay. In the instant case, it, though equally required to be furnished u/s. 44AB along with the TAR, has admittedly not been furnished even after being obtained. No reason for the same has been advanced, much less reasonable

cause for the default proved, as the law, per s. 273B, requires for excluding penalty. Further, this is apart from the unexplained delay in obtaining and furnishing the TAR, filed only on 29/3/2018.

Under the circumstances, we find no explanation, much less proving the reasonable cause for the delay, which in fact is a continuing one. We therefore find no reason to interfere with the impugned order and, accordingly, decline to. We decide accordingly.

4. In the result, the appeal filed by the assessee is dismissed.

*Order pronounced on July 31, 2023 under Rule 34 of The Income Tax
(Appellate Tribunal) Rules, 1963.*

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: 31st July, 2023

Copy to:

1. The Appellant
2. The Respondent
3. The CIT concerned
4. The DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin

n.p.