

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं./ITA No.209/RPR/2023

निर्धारण वर्ष /Assessment Year: 2012-13

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| Gramin Sewa Sahakari Samiti Maryadit, Village-Arang, Raipur Chattishgar-493 441 | Vs | Income Tax Officer Ward -1(2) Civil Lines, Raipur |
| PAN No. AAAAG 9701D | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| अपीलार्थी की ओर से/ Appellant by | : | None (Written Submission) |
| प्रत्यर्थी की ओर से /Respondent by | : | Mr.Satya Prakash Sharma, Sr.DR |

आयकर अपील सं./ITA No.210/RPR/2023

निर्धारण वर्ष /Assessment Year: 2012-13

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| Gramin Sewa Sahakari Samiti Maryadit, Village-Sivini, Abhanpur Raipur, Chattishgar-493 661 | Vs | Income Tax Officer Ward -1(1) Civil Lines, Raipur |
| PAN No. AAAAG 9764E | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| अपीलार्थी की ओर से/ Appellant by | : | None (Written Submission) |
| प्रत्यर्थी की ओर से /Respondent by | : | Mr.Satya Prakash Sharma, Sr.DR |

आयकर अपील सं./ITA No.211/RPR/2023

निर्धारण वर्ष /Assessment Year: 2012-13

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| Gramin Sewa Sahakari Samiti Maryadit, Village-Charoda, Phingeshwar Gariaband, Chattishgar-493 992 | Vs | Income Tax Officer Ward -1(1) Civil Lines, Raipur |
| PAN No. AAAAG 9721H | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| अपीलार्थी की ओर से/ Appellant by | : | None (Written Submission) |
| प्रत्यर्थी की ओर से /Respondent by | : | Mr.Satya Prakash Sharma, Sr.DR |

आयकर अपील सं./ITA No.212/RPR/2023

निर्धारण वर्ष /Assessment Year: 2012-13

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| Gramin Sewa Sahakari Samiti Maryadit, Village-Phingeshwar, Gariaband Chattishgar-493 992 | Vs | Income Tax Officer Ward-1(1) Civil Lines, Raipur |
| PAN No. AAAAG 9724C | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| अपीलार्थी की ओर से/ Appellant by | : | None (Written Submission) |
| प्रत्यर्थी की ओर से /Respondent by | : | Mr.Satya Prakash Sharma, Sr.DR |

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| सुनवाई की तारीख / Date of Hearing | : | 24/08/2023 |
| घोषणा की तारीख/ Date of Pronouncement | : | 25/08/2023 |

आदेश / ORDER**Per Arun Khodpia, AM :**

The captioned appeals are filed by different assesseees of a common group, having common issue for common assessment year 2012-13, directed against the different orders of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre, Delhi, emerged from the orders of the Ld. Assessing Officer, u/s.271B of the Income Tax Act, 1961 (in short "the Act"). The details of these appeals are as under:

| SL. No. | ITA No. | Assessee's Name | AY | Date of the order of the Ld. CIT(A) | Date of the order of the Ld. AO | Remarks |
|---------|---------------|--|---------|-------------------------------------|---------------------------------|------------------------------------|
| 1 | 209/RPR/2023 | M/s.Gramin Sewa Sahakari Samiti Maryadit | 2012-13 | 21.03.2023 | 11.09.2015 | Penalty levied u/s.271B of the Act |
| 2 | 210 /RPR/2023 | | | 31.02.2023 | 09.09.2015 | |
| 3 | 111/RPR/2023 | | | 28.04.2023 | 09.09.2015 | |
| 4 | 112/RPR/2022 | | | 37.01.2022 | 09.09.2015 | |

2. The only issues involved in the present appeals are pertaining to levy of penalty u/s.271B of the Income Tax Act, 1961 (in short "the Act.)

3. We shall take up the appeal in ITA No.209/RPR/2023 for the AY 2012-13 as the lead matter, and the order therein passed, shall be applied *mutatis-mutandis* to the remaining appeals i.e. ITA Nos.210, 211, 212/RPR/2023. The grounds of appeal raised by the assessee in ITA No.209/RPR/2023 are as under:

"1. That the Ld. CIT (Appeals) NFAC, Delhi erred in confirming Rs 1 the penalty levied u/s 271B by the Ld. Assessing officer at Rs.1,50,000/- Prayed that there is no delay on the part of the Appellant. The Statutory auditor was not appointed timely by the Registrar of Cooperative Society which was not in the hands of the appellant. only after completion of statutory audit tax audit was done. There is reasonable cause u/s 271B for delay, therefore the penalty levied kindly be cancelled.

2 That the Appellant is functioning in a remote small village at sakri. The Notices fixation by the Ld. CIT (Appeals), NFAC Delhi did not come to the knowledge of the Appellant and therefore, proceeding could not be attended."

4. The brief facts of the case are that the assessee is a Primary Agricultural Co-operative Society engaged in carrying out business of banking, paddy procurement, sale of fertilizers, seeds, manures, and pesticides and of control items under Public Distribution System. During the course of assessment proceedings, it was noticed that the assessee has failed to get its accounts audited within the specified due date i.e. 30.09.2012. Audit was done in the case on 30.03.2013 i.e. after the due date stipulated u/s 44AB of the Act. Thus, the AO observed that the assessee had committed default within the meaning of sec.44AB of the Act. Accordingly, penalty proceedings u/s 271B was

initiated. Notice u/s.271B of the Act, was issued to show cause '*as to why penalty should not be imposed*'. In response the assessee submitted that the assessee is a cooperative society governed by provisions of the Chhatisgarh Cooperative Act 1965. Audit of society is conducted by the Auditor appointed by the Registrar of Cooperative Societies u/s 68 of the Chhatisgarh Cooperative Act 1965. As the Auditor has not completed audited the accounts of the assessee within the specified due date as prescribed u/s 44AB, the assessee was not in a position to comply with the provisions of section 44AB.

5. The aforesaid response of the assessee was not found, convincing and acceptable by the Ld.AO, therefore, after noting the satisfaction, penalty u/s.271B of the Act, was levied for Rs.1,11,145/- i.e. (i) ½ percent of gross-receipts of the business of the assessee's society which was Rs.1,11,145/- (½ percent of Rs.2,22,29,099/-) or (ii) Rs.1,50,000/- whichever is less. Aggrieved with the penalty imposed by the Ld.AO, alleging that there was no reasonable cause in delaying the completion of audit u/s.44AB of the Act, assessee preferred an appeal before the Ld.CIT(A), NFAC. But the contentions of the assessee were not found satisfactory, accordingly disregarding the same the appeal of assessee was dismissed by the Ld.CIT(A) by sustaining the levy of penalty u/s 271B.

6. Being the aggrieved with the order of the Ld. CIT(A), the assessee has carried the matter before us.

7. At the beginning of the hearing, it was pointed out by the Registry that the appeal of the assessee is delayed by 10 days, for which, an affidavit was submitted by Shri Santosh Sahoo, Manager of the Co-operative Society, stating that the assessee's society is situated in a remote village viz., Arang having population of about 8000, the assessee is a Primary Agricultural Co-operative Society and he is working of benefit of farmers and also providing items to Below Poverty Line (BPL) people. The assessee is not well versed with electronic medium, have tried to contact his Counsel in the matter also due to involvement of society people for procuring paddy from farmers as per policy of the State Government, necessary action could not be taken in due time, it was, therefore, prayer that the delay in filing of the appeal may kindly be condoned. In view of the submissions of the assessee with regard to delay in filing of the appeal, we find that there were reasonable and sufficient cause, whereby the assessee was prevented to file its appeals in the prescribed time. Therefore, we find it appropriate to condone the delay. Accordingly, having similar facts and circumstances ITA No. 209, 210 & 212/RPR/2023 having delay of 9, 58, 62 days are permitted to be allowed for adjudication by granting of condonation of delay.

8. Since, the delay of the assessee was condoned, now we are taking up the issues in the present appeal for our consideration and adjudication.

9. At the outset, it was noticed that there was no representation on behalf of the assessee, however, written submission was submitted by the assessee dated 21.08.2023. None appeared on behalf of the assessee when the matter is called for hearing on 24.08.2023, however, the issue is found to be covered by the decision of ITAT Raipur wherein a view has already taken, with no objection by the revenue, we find it appropriate to dispose off the matters on its merits on the basis of material available on record.

10. Written submission furnished by the assessee in ITA 209/RPR/2023 is extracted as under:

Assessment and first appellate proceedings

i. The assessee society is a primary agricultural cooperative society engaged in carrying out business banking, paddy procurement, sale of fertilizers, seeds, manures, pesticides and sale of control item under Public Distribution System. 100% deduction of income from all the said activities has been claimed u/s 80P of the I.T. Act 1961 while filing return for the year under consideration.

ii. That assessment of the assessee society was completed by the AO u/s 143(3) of the Act o 04.03.2015 by determining total income of Rs. 3,85,230/-. That penalty proceeding was also initiate while passing assessment order u/s 271B for failure to get the books of account for the F.Y. 2011/1 audited by an accountant before the specified date mentioned in Explanation to section 44AB, which was 30.09.2012, and to furnish by that date the report of such audit in Form No. 3CA duly signed an verified by such accountant and setting forth such particulars as may be prescribed in Form No. 3CD

iii. That without giving due regards to the reasonable cause shown by the assessee society with supporting documents for delay in getting books of account audited for the F.Y. 2011/12 and furnish the audit reports and audited financial statement on or before the specified date mentioned section 44AB during the course of penalty proceeding u/s 271B for the A.Y. 2012/13, AO has levied penalty

u/s 271B of Rs. 1,11,145/-. On first appeal, CIT (Appeals) has upheld the said action of the AO.

2 Assessee society's submissions before hon'ble ITAT:-

That your honour authority for appointment of statutory auditor of the assessee society for the F.Y. 2011/12 was lying with "Registrar of Co-operative Societies", therefore, assessee society had no control to get the books of account audited from statutory auditor within specified time mentioned in section 44AB, which ultimately resulted in delay in getting tax audit report u/s 44AB in Form No. JCA & statement of particulars required to be furnished u/s 44AB in Form No. 3CD from the tax auditor. That since statutory auditor had given audit certificate for the F.Y. 2011/12 on 12.01.2013, which was beyond the specified date mentioned in section 44AB, after appointment of tax auditor on 12.03.2013 assessee society could get Form No. 3CA & Form No. 3CD only on 22.03.2013. Thus, within a span of just 14days after appointment of tax auditor, assessee society had made compliance to the provisions of section 44AB and furnished tax audit reports. Copies of report of statutory auditor appointed by the Registrar of Co-operative Society dt. 12.01.2013, tax auditor appointment letter dt. 12.03.2013, tax audit reports in Form No. 3CA & Form No. 3CD dt. 21.03.2013, computation of total income & acknowledgment of return for the F.Y. 2011/12 relevant to the A.Y. 2012/13 and reply filed before CIT(A) are enclosed for ready reference.

Since, there was reasonable cause for delay in getting tax audit report u/s 44AB in Form No. 3CA & statement of particulars required to be furnished u/s 44AB in Form No. 3CD from the tax auditor for the F.Y. 2011/12 in terms of section 273B of the Income-tax Act' 1961, the penalty levied u/s 271B may kindly be cancelled.

That your honour in similar set of facts of the case divisional bench of hon'ble ITAT, Raipur in case of "Adim Jati Sewa Sahakari Samiti Maryadit, Mainpur Dhorra Vs. ITO in ITA No. 19/RPR/2022 dt. 24.04.2023" allowed the assessee's appeal and cancelled penalty levied u/s 271B by holding that "We have considered the rival contentions and perused the orders of the authorities below along with the relevant documents placed on record. It is fairly admitted that the statutory auditor has provided the audit certificate and audit report only on 22.08.2015 and thereafter the tax audit was conducted, completed and submitted. This being so, we are of the view that the assessee has sufficient and reasonable cause for delay in submitting the audit report. Since the auditor was appointed by the Registrar of Cooperative Societies, therefore, there is no delay on the part of the assessee. Accordingly, respectfully following the various judicial pronouncements, referred to above, we are of the considered opinion that the penalty levied by the AO u/s 271B of the Act and confirmed by the ld. CIT(A) deserves to be deleted and we do so. Thus, appeal of the assessee is allowed".
Copy of said decision of hon'ble ITAT is enclosed.

The assessee society prays that -

In view of all above and especially favourable decision of jurisdictional ITAT Raipur Bench in similar set of facts, your honours are kindly requested to cancel the penalty of Rs. 1,11,145/- levied u/s 271B for the A.Y.2012/13 and oblige."

11. On perusal of the written submissions of the assessee, and the submissions of the Ld. Sr. DR, who have vehemently supported the orders of authorities below. It is noticed that the issue raised in the present case pertaining to leaving of penalty u/s 271B for not getting the accounts of the society audited within the prescribed time period was discussed and dealt with by the Co-ordinate Bench of this Tribunal in the case of another group assessee of the present appellants i.e. M/s Gramin Sewa Sahakari Samiti Maryadit, in ITA No. 108/RPR/2023, wherein the observation of the ITAT are as under:

"12. The Ld. DR, on the other hand, submitted that since the assessee was non-compliant before the Ld.CIT(A), the appeal of the assessee should be dismissed on this count itself or alternatively, the issues in the present appeal needs to be restored back to the file of the Ld.CIT(A) for fresh adjudication of the same on merits.

13. We have considered the rival contentions and perused the materials available on record. Also, we have considered the order of the Tribunal in ITA No.19/RPR/2022, wherein, the co-ordinate Bench of the ITAT has considered several case laws, having dealt the issue of levy of penalty u/s.271B of the Act, and has held as under:

i) Kendrapara Credit Co-operative Society Ltd., ITA No.87/CTK/2021, order dated 07.06.2022, wherein it is held as under :-

8. We have considered the rival submissions. A perusal of the facts as recorded by the AO shows that the delay in submitting the audit report was on account of delay in obtaining audit report from the statutory auditors. It is fairly admitted that the statutory auditors is appointed by the Registrar of Co-operative Societies and not by the assessee. This being so, we are of the view that the assessee has sufficient and reasonable cause for delay in obtaining the audit report. It is also an admitted fact that the audit report was available before the AO, when the assessment was done. This being so, we are of the view that it is a fit case for deletion of penalty u/s.271B of the Act. Consequently, the penalty levied by the AO U/S.271B of the Act and confirmed by the Id CIT(A) stands deleted.

ii) M/s TPD 101 Uthangarai Mil Producers Co-operative Society Ltd., ITA No.152/Chny/2021, order dated 29.06.2022, wherein it is held as under :-

7. We have heard both the parties and perused the materials available on record and gone through the orders of the authorities below. The assessee supposed to have been filed audit report as required u/s.44AB of the Act, on or before 31.10.2015. However, such audit report has been filed on 05.03.2016, which is before the date of completion of assessment proceedings u/s.143(3) of the Act. In other words, although the assessee has filed tax audit report beyond the stipulated period, but such tax audit report was made available to the AO before he completes assessment proceedings. The assessee has given reasons for delay in filing tax audit report. As per which, the audit of accounts of society done by the Dept. of Cooperative Audit, could not be completed on or before 31.10.2015 and said delay was not in the hands of the assessee. Therefore, there is a reasonable cause for not filing the tax audit report within prescribed time limit and thus, penalty cannot be levied. We find merits in the submission of the assessee for the simple reason that non-filing of audit report within the due date is a venial technical breach without any mala fide intention on the part of the assessee. Because, completion of audit of books of accounts of the society is under the control of Dept. of Cooperative Audit and thus, unless the Dept. of Cooperative Audit completes audit, the assessee cannot file return of income along with tax audit report. Therefore, we are of the considered view that reasons given by the assessee for not filing tax audit report prescribed u/s.44AB of the Act, is neither intention nor any mala fide intention, but it is venial technical breach and for this reason, penalty u/s.271B of the Act, cannot be levied. This principle is supported by the decision of the Hon'ble jurisdictional High Court in the case of P.Senthil Kumar v. PCIT reported in 416 ITR 336, where an identical issue had been considered by the Court and held that for venial technical breach without any mala fide intention, penalty cannot be levied. The ITAT Cochin Bench in ITA No.411/Cochin/2018 vide order dated 05.02.2019 had held that once audit report has been made available before the AO, when the assessment proceedings were completed, then, there is no reason for levy of penalty.

8. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that reasons given by the assessee for not filing tax audit report within due date comes under reasonable cause as provided u/s.271B of the Act, and thus, the AO is erred in levying penalty u/s.271B of the Act. Hence, we direct the AO to delete penalty levied u/s.271B of Act.

iii) Arambagh Co-op Agricultural Marketing Society Ltd., ITA No.804&8056/Kol/2014, order dated 28.02.2017, wherein the Tribunal has held as under :-

8. We heard rival submissions and perused the material available on record. As rightly pointed out by the Id. AR that this Tribunal decided the identical issue by holding that the delay caused in obtaining and filing the audit report was beyond the control of assessee. The relevant portion para no-4 of said order dated 03- 06-2016 in the case of supra is reproduced herein below for useful reading:

4. We have heard both the sides and also perused the relevant material available on record. As submitted on behalf of the assessee before the authorities below as well as before us, its failure to obtain and furnish the tax audit report by the specified date of 30.09.2009 as per the requirement of section 44AB was due to delay in completion of statutory audit by the auditors appointed by the Cooperative Department. Since the statutory auditor under the Cooperative Act was to be appointed by the Cooperative Department and such appointment as well as conduct and completion of audit by the statutory auditor was beyond the control of the assessee, we find merit in the contention of the Id. counsel of the assessee that the delay in completion of statutory audit, which caused the failure of the assessee to obtain and furnish the tax audit report under section 4AB, was due to the reasons beyond the control of the assessee and the same constituted the sufficient cause for its failure to comply with the requirement of section 44AB. Moreover, the tax audit report obtained belatedly was filed by the assessee along with its return of income for the year under consideration on 05.01.2010 and the same, therefore, was available to the Assessing Officer while making the assessment of the assessee for

the year under consideration. The default on the part of the assessee in obtaining and furnishing the tax audit report by the specified date thus was technical or venial in nature. Having regard to all these facts and circumstances of the case, we are of the view that it is not a fit case to impose penalty under section 271B and cancelling the penalty so imposed by the Assessing Officer and confirmed by the Id. CIT(Appeals), we allow this appeal of the assessee."

9. In the present case also the assessee could not obtain and file the tax audit report as required u/s. 44AB of the Act due to delay in appointment of auditors by the co-operative department for statutory audit. This appointment is not in the control of the assessee. It is only then after that the assessee appoints tax auditor. The assessee filed the tax audit report immediately after obtaining the same from its Tax Auditor in Form No.3CA on 14-09-2009. We find that the issue on hand is similar to that case decided by order dated 03-06-2016 by the Coordinate Bench of this Tribunal passed in ITA No.2396/Kol/2013 in the case of supra. Following the same, we are of the view that it is not a fit case to impose ITA Nos. 804 & 805/Kol/14-A-JM M/s. Arambagh Co-op Agrl. Mktg. Society Ltd 4 the penalty of Rs.1,00,000/- u/s. 271B of the Act. Therefore, we cancel the penalty imposed by the AO and confirmed by the CIT(A). Therefore, the ground raised by the assessee is allowed.

iv) Ahmedabad Co-operative Dept. Stores, [2001] 73 TTJ 784 (Ahmedabad-ITAT), wherein the Tribunal has held as under :-

5. I have given careful thought to the rival submissions advanced before me. There is no dispute that assessee is a cooperative society and its activities are governed by Gujarat Cooperative Societies Act, 1960. The accounts of the assessee are required to be audited by a special auditor appointed by the Registrar of Cooperative Societies. It is well known that Government auditors audit accounts of such cooperative societies. They carry out audit as per the statutory requirements and the assessee can have no control or authority over such auditors. It is settled law that penalty is to be imposed for defiance of law or for not carrying out a statutory obligation. It cannot be imposed on the assessee for nonperformance of duties by public agencies like Government auditors. The assessee right from beginning contended that delay is attributable to late auditing done by the statutory auditors. For the act of statutory auditor, the assessee cannot be held to be responsible under a provision like section 271B. It has been a settled law since the decision of Hindustan Steel Ltd. v. State Of Orissa. [1972] 83 ITR 26 (SC) that the levy of penalty is discretionary and penalty is not to be imposed for technical or venial breach of a statutory provision. In the present case, statutory audit was completed only on 17-1-1990. The auditors raised some points in the audit report which were required to be looked into and complied with by the assessee. After complying with the various points the assessee submitted return on 26-2-1990. It is not a case in which the assessee did not take proper care to comply with various statutory provisions. No default is attributable to the act and conduct of the assessee. Therefore, in my opinion, it is not a fit case for levy of penalty under section 271B of the IT Act. The penalty levied is held to be unjustified and is cancelled. In the light of above finding I deem it unnecessary to go into several other legal issues raised by the learned counsel for the assessee. The penalty imposed is cancelled.

v) Mathana Model Co-op Credit & Services Society Ltd., [2008] 299 ITR 70 (Punjab & Haryana), wherein the Hon'ble Punjab & Haryana High Court held as under :-

Section 271B, read with section 273B, of the Income-tax Act, 1961 - Penalty - For failure to get accounts audited - Assessment year 2004-05 - As assessee-co-operative society failed to get its accounts audited within stipulated date, a show-cause notice under section 271B was issued to it -

Assessee submitted copy of audit report along with its reply stating that it being a co-operative society was required to get its accounts audited by auditor appointed by Registrar, Co-operative Societies and since auditor was not appointed by Registrar within stipulated time, audit report could not be submitted in time - Assessing Officer rejected assessee's explanation and imposed penalty upon it - Whether any penalty could be levied upon assessee - Held, no.

vi) Iqbalpur Cooperative Cane Development Union Ltd. [2013] 218 Taxman 70 (Uttarakhand)(Mag.), wherein the Hon'ble Uttarakhand High Court has held as under :-

Section 44AB, read with sections 271B and 273B of the Income-tax Act, 1961 - Tax audit [Appointment of auditor] - Assessee was a cooperative society, registered under U.P. Co-operative Societies Act, 1965 - Accounts of assessee was required to be audited in accordance with section 64 of U.P. Co-operative Societies Act - Since assessee's account was not audited within stipulated date, penalty under section 271B was imposed on assessee - Tribunal granted relief to assessee under section 273B holding that assessee established that appointment of auditor was not within his domain and, it was also not within his domain to have auditor to be appointed by Registrar or such person as appointed by State Government, to complete audit within specified date - Whether on fact there was no scope of interference with this appeal - Held, yes [Para 2] [In favour of assessee]

vii) Hindustan Steel Ltd., [1972] 83 ITR 26 (SC), wherein the Hon'ble Supreme Court has held as under :-

Section 270 of the Income-tax Act, 1961 - Penalty - General - Penalty is not to be imposed if there is no conscious breach of law An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest, or acted in conscious disregard to its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

14. On perusal of the ratio of law emerged in the aforesaid orders, respectfully following the judicial pronouncements, considering the facts and issue in the present appeal wherein it was the admitted fact that the Audit certificate was issued by the Tax Auditor on 20.02.2013, which was after the due date of completion of the audit u/s 44AB, which was contented by the assessee as beyond its control, and rightly so, we find merit in the submission of the assessee, however in the submissions of the assessee there was no whisper pertaining to delayed appointment of the Auditor, which could be the key fact or event justify the contention of the assessee that there was nothing on the part of assessee which makes assessee responsible for the delay. It is therefore necessary to verify when the statutory auditors and tax auditor were appointed by the regulatory

authority i.e. registrar of cooperative society, thus, we are of the considered opinion that order of penalty levied by the Ld.AO u/s.271B of the Act and confirmed by the Ld.CIT(A) is liable to be set aside with a direction to verify that the appointment of the statutory/tax auditor was done after the due date of completion of audit u/s 44AB of the Act, and if same is the case and audit was completed within a reasonable time of such appointment, then the penalty u/s 271B cannot be held as justified. We, therefore, set aside the order of the Ld.CIT(A) and restore the issue to the files of AO to verify the documents as discussed herein above, accordingly, in terms of our aforesaid observations herein either enforce or vacate the penalty-imposed u/s.271B of the Act in the present case.”

12. In terms of aforesaid decision of the ITAT, since the facts and issue raised in present case in ITA No.209 to 212/RPR/2023 is identical to the facts and issue raised in ITA No.108/RPR/2022 wherein the matter was set aside to the files of the Ld. Assessing Officer with an opportunity to the assessee to get the facts furnished to be examined by the Ld. AO to decide the issue in terms of our observations in ITA No.108/RPR/2022. Respectfully following the decision of the ITAT, Raipur Bench by which the issue in the instant case is squarely covered, we direct Ld AO to adjudicate the issue afresh in terms of our observations herein above by granting an opportunity to assessee to have the evidences furnished, for verification of facts and documents. Needless to say, assessee is required to assist the Ld AO in assessment proceedings with timely and proper submission of details and explanations, failing which Ld AO will be at Liberty to decide the issue in accordance with law.

13. In the result, the appeals filed in the present ITA No.209/RPR/2023 is partly allowed for statistical purposes, also the appeal in ITA 210, 211 and 212/RPR/2023, wherein facts and grounds of appeal are identical having similar facts and circumstances, therefore our decision in ITA 109/RPR/2023 shall be *mutatis mutandis* apply on these appeals, thus, the same are likewise partly allowed for statistical purposes.

14. In combined result appeals ITA 209 to 212/RPR/2023 are partly allowed for statistical purposes in terms of our observations herein above.

Order pronounced in the Court on 25th August, 2023.

Sd/-

Sd/-

(RAVISH SOOD)

(ARUN KHODPIA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 25/08/2023

Pramod Kumar, Sr. PS (on tour)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur