

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 172/KOL/2023
Assessment Year: 2016-17**

***Kalna II CADP Farmers Service Co-operative Society
Limited.....Appellant
[PAN: AACAK 2236 M]***

Vs.

ITO, Ward-1(2), Burdwan.....Respondent

Appearances:

Assessee represented by: Sh. Somnath Ghosh, Adv.

Department represented by: Sh. Amitava Sen, Addl. CIT.

Date of concluding the hearing : July 4th, 2023

Date of pronouncing the order : September 11th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2016-17 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in

short Id. 'CIT(A)'] dated 16.01.2023 arising out of the assessment order framed u/s 143(3) of the Act dated 24.12.2018.

2. The assessee is in appeal before this Tribunal raising the following grounds:

“1. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-N.F.A.C. failed to appreciate that none of the conditions precedent required to be satisfied for the assumption of jurisdiction u/s. 271B of the Income Tax Act, 1961 existed and/or have been complied with and/or fulfilled in the instant case by the Ld. Income Tax Officer, Ward 1 (2), Burdwan and his specious action in upholding the impugned order imposing penalty in the sum of Rs. 1,50,000/- alleging purported infringement to the provisions of s. 44AB of the Income Tax Act, 1961 is therefore ab initio void. ultra vires and ex-facie null in law.

2. FOR THAT on a true and proper interpretation of the scope of the provisions of s. 271B of the Income Tax Act, 1961, the Ld. Commissioner of Income Tax (Appeals)- N.F.A.C. was absolutely in error in upholding the impugned order imposing penalty in the sum of Rs. 1,50,000/- passed by the Ld. Income Tax Officer, Ward 1(2), Burdwan and his purported finding de hors any violation thereof is wholly arbitrary, unreasonable, and perverse.

3. FOR THAT the Ld. Commissioner of Income Tax (Appeals)- N.F.A.C. erred in sustaining the impugned order imposing penalty u/s. 271B of the Act passed by the Ld. Income Tax Officer, Ward 1 (2), Burdwan without considering the facts of the instant case in light of the provision of s. 273B of the Income Tax Act, 1961 and the impugned findings considering extraneous parameters not germane to the issue is therefore, unfounded, unjustified, and untenable in law.

4. FOR THAT the specious approach of the Ld. Commissioner of Income Tax (Appeals)- N.F.A.C. of considering improper facts, failing to consider proper position in law and thus coming to an erroneous finding in confirming the impugned order imposing penalty u/s. 271B of the Income Tax Act, 1961 in the sum of Rs. 1,50,000/- passed by the Ld. Income Tax Officer, Ward 1(2), Burdwan is wholly illegal, illegitimate, and infirm in law.

3. The sole issue raised in the instant appeal is that ld. CIT(A) erred in confirming the penalty of Rs. 1.50 Lakh levied by ld. AO u/s 271B of the Act for not getting the books of accounts audited u/s 44AB of the Act.

4. We have heard rival contentions and perused the records placed before us. We notice that the assessee is a cooperative society and it filed e-return on 03.01.2017 declaring NIL income for AY 2016-17. The assessment u/s 143(3) of the Act was completed on 24.12.2018. During the course of assessment proceedings, ld. AO noticed that tax audit report has been filed belatedly i.e. on 02.01.2017 and thus, initiated penalty proceedings u/s 271B of the Act for late filing of tax audit report. Subsequently, penalty proceedings u/s 271B of the Act were carried out and ld. AO levied penalty u/s 271B of the Act observing that the assessee did not get the books of accounts audited in time and failed to furnish the same before the due date prescribed under the Income Tax Act. The view of the AO was confirmed by ld. CIT(A).

5. Before us, ld. Counsel for the assessee referring to the paperbook containing 62 pages submitted that the books of accounts of the assessee were duly audited u/s 44AB of the Act and audit report dated 07.10.2016 was e-filed on 16.10.2016 which was within the extended due date of filing the audit report u/s 44AB of the Act. Subsequently, the audit report was revised by the Auditor on finding some apparent mistake in the previous report and thus, revised the same by preparing the revised audit report on 26.12.2016 and e-filed it on 02.01.2017. Ld. Counsel for

the assessee as an officer of Court has submitted that the audit report was duly obtained and was uploaded on the income tax portal on 16.10.2016. Considering this fact, we are inclined to hold that since the assessee has duly complied to the provisions of Section 44AB of the Act and has furnished the audit report before the statutory date prescribed under the Act, the assessee should not have visited by penalty u/s 271B of the Act. Thus, the finding of Id. CIT(A) is set aside and the penalty of Rs. 1.50 Lakh levied u/s 271B of the Act is deleted. The effective grounds of appeal raised by the assessee are allowed.

6. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 11th September, 2023

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Manish Borad]
Accountant Member

Dated: 11.09.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Kalna II CADP Farmers Service Co-operative Society Limited, C/o. S.N. Ghosh & Associates, Advocates 2, Garstin Place, 2nd Floor, Suite No. 203, Off Hare Street, Kolkata-700 001.**
- 2. ITO, Ward-1(2), Burdwan.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata