

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

Before Shri Sanjay Arora, AM & Shri Manomohan Das, JM

ITA No.138/Coch/2023: Asst. Year: 2017-2018

The Chovva Co-operative Rural Bank Limited Chovva Post Office Kannur – 670 006. [PAN: AAAAT3289K]	vs.	The Income Tax Officer Ward 1, Kannur.
(Appellant)		(Respondent)

Appellant by: Sri.Arun Raj, Advocate
Respondent by: Smt.J.M.Jamuna Devi, Sr.DR

Date of Hearing: 08.09.2023	Date of Pronouncement: 29.09.2023
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ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the confirmation of penalty under section 271B of the Income-tax Act, 1961 ('the Act' hereinafter) by the Commissioner of Income-tax (Appeals), Income Tax Department [CIT(A)] vide his order dated 27.01.2023, levied in the sum of Rs.1.50 lakh by the Assessing Officer (AO) vide his order dated 16.02.2022 for assessment year (AY) 2017-2018.

2. The assessee's, a primary agricultural co-operative society (PACS) under the Kerala Co-operative Societies Act, 1969 (Kerala Act), case before us, which is the same as before the Revenue authorities, is that the 21-day delay in furnishing the tax audit report u/s.44AB of the Act had been caused on account of the delayed audit of it's accounts and, thus, receipt of audit report there-under from the Co-operative Department. The audit report u/s.44AB, finalized on 18.11.2017, was accordingly furnished along with the return of income on 28.11.2017, i.e., as against the due date

u/s.139(1) of 07.11.2017. The same did not find favour with the Revenue authorities inasmuch as the said explanation was not substantiated.

3. We have heard the parties, and perused the material on record. There is, to begin with, no reference to any of these dates in the assessee's explanation, which is otherwise the same – as it ought to be, as before the Revenue authorities. This assumes added significance in view of a clear finding by the Assessing Officer (AO) of the assessee's case being unsubstantiated (para 3.1/pg. 3 of the penalty order), not controverted at any stage. Two, even as the 10-day delay, i.e., from 18.11.2017 to 27.11.2017, is unexplained inasmuch as the audit report, since obtained, already delayed for furnishing, could have been filed by the assessee on 18.11.2017 itself, or thereabouts, we consider the 21-day delay as, under the circumstances, satisfying the test of a reasonable cause u/s.273B, saving penalty. So, however, the assessee's explanation is *sans* any reference to the date of obtaining the audit report from the co-operative department, which only would make his explanation complete and, in fact, substantiate it. Sri.Raj, the learned counsel for the assessee, on being inquired in the matter, stated of the same being not readily available. Even ignoring the same, inasmuch as the over-all delay is marginal, with the delayed receipt of audit reports from the co-operative department we observe to be a regular feature, there is nothing on record to show that the said audit report was also filed along with on 28.11.2017 and, in fact, even no contention to that effect. This is as, where not, it cannot be said that the assessee had complied with the prescription of sec.44AB of the Act with a 21-day delay. The Hon'ble jurisdictional High Court in *Peroorkkada Service Cooperative Bank Ltd. vs. ITO* [2020] 424 ITR 422 (Ker) did not accept the plea of submission of audit report under the Kerala Act as in sufficient compliance of sec. 44AB, as vide third *proviso* thereto, it also obliges furnishing the tax audit report in the prescribed forms (Forms 3CA and 3CD). That is, both the audit reports would be required to be obtained and furnished by the due date of filing the return u/s. 139(1) in satisfaction of the mandate of s. 44AB. The requirement is independent of the

filing of the return u/s. 139(1). This would also meet the assessee's reliance on *Anilkumar L. v. ITO* (in ITA No.393/Coch/2018, dated 30.04.2019), as indeed others by the Tribunal regarding breach of sec.44AB as being technical and venial; a plea specifically rejected by the Hon'ble Court.

4. The matter, accordingly, setting aside the impugned order, is restored to the file of the AO. Where the assessee has indeed filed the audit report under the Kerala Act along with return of income on 28.11.2017, no penalty is leviable. On the other hand, where it has not been so filed, the penalty shall hold. We decide accordingly.

5. In the result, the assessee's appeal is disposed of in the above terms, i.e., allowed for statistical purposes.

*Order pronounced on September 29, 2023 under Rule 34 of The Income Tax
(Appellate Tribunal) Rules, 1963*

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin; Dated: September 29, 2023
Devadas G*

Copy to:

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

Assistant Registrar
ITAT, Cochin