

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI**

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं  
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND  
SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.655/Chny/2023  
निर्धारण वर्ष /Assessment Year: 2016-17

A 1235 Madurai Taluk Agricultural- Producers Co-operative- Marketing Society Ltd., 31 Visuvasapuri, 3 <sup>rd</sup> Street, Gnanaolivupuram, Madurai-625 016.  [PAN: AAAAA 9671 J] (अपीलार्थी/Appellant)	v.	The Income Tax Officer, Non-Corporate Ward-1(1), Madurai.  (प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से /Respondent by	:	Shri AR.V.Sreenivasan, Addl.CIT
सुनवाई की तारीख/Date of Hearing	:	30.10.2023
घोषणा की तारीख /Date of Pronouncement	:	30.10.2023

**आदेश / ORDER**

**PER MANJUNATHA.G, AM:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi, dated 24.03.2023, and pertains to assessment year 2016-17.

**2. The assessee has raised the following grounds of appeal:**

- 1) The order of the learned CIT(A) is bad and erroneous in law.

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2) *The learned CIT(A) erred in not considering the replies filed by the appellant in proper perspective.*

3) *The Assessing Officer as well as the learned CIT(A) erred in not considering the material fact that report u/s. 44AB was filed on 30/09/2017, much before the completion of assessment, which was completed later on 30/11/2018. (Reliance is placed on the decisions by the jurisdictional ITAT, Chennai in ITA No: 2248/CHNY/2019 dated 07/09/2022 and ITA No: 6037CHNY/2022 dated 15/02/2023).*

4) *The learned CIT(A) erred in not considering the fact that there was a reasonable cause for the delay in getting the books of accounts audited u/s. 44AB under the TN Co-op. Societies Act, 1983, which is inbuilt in the last proviso to Section 44AB. (Reliance is placed on the decision by the Madras HC reported in 263 ITR 334).*

*And for other reasons that may be adduced at the time of hearing, the appellant prays that this appeal be admitted, considered and justice be rendered.*

**3.** The brief facts of the case are that the assessee is a Co-operative Marketing Society and has filed return of income for AY 2016-17 on 30.09.2017 declaring 'nil' total income. The case was selected for scrutiny and the assessment has been completed u/s.143(3) of the Income Tax Act, 1961 (in short "the Act") on 30.11.2018, accepting return filed by the assessee. During the course of assessment proceedings, the AO noticed that the assessee has failed to file Tax Audit Report u/s.44AB of the Act along with return of income. Therefore, the AO called upon the assessee to explain 'as to why' penalty u/s.271B of the Act, cannot be levied for not filing Tax Audit Report on or before due date prescribed under the provisions of the Act. In response, the assessee submitted that the assessee's society is subjected to audit under the Tamil Nadu Co-operative Societies Act, 1983, and the Department of Cooperative Audit, has not completed the audit. Therefore, assessee could not file return of income along with Tax Audit Report on or before due date prescribed under the Act. The AO, however, was not convinced with the explanation of the assessee and according to the AO, every person carrying on business is

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required to get accounts audited and the same should be furnished before the specified date for filing of return of income if turnover/gross-receipts exceed specified limits. Since, the assessee is liable to get the accounts audited from an Accountant as required u/s.44AB of the Act, and further, the assessee failed to file such Audit Report on or before due date prescribed u/s.139(1) of the Act, the assessee is liable for penalty u/s.271B of the Act, and thus, rejected arguments of the assessee levied penalty of Rs.1,50,000/- u/s.271B of the Act. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in his appellate order dated 24.03.2023, rejected arguments of the assessee and upheld penalty levied u/s.271B of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

**4.** None appeared for the assessee. We have heard the Ld.DR, perused the materials available on record and gone through orders of the authorities below. The Ld.DR, Shri AR.V.Sreenivasan, Addl.CIT, supporting the order of the Ld.CIT(A), submitted that the law by way of provisions of Sec.44AB of the Act, mandates every person carrying on business to file Tax Audit Report from an Accountant on or before due date prescribed u/s.139(1) of the Act, if receipts from business exceed the threshold limit. In the present case, although, the assessee is liable to file Tax Audit Report as required u/s.44AB of the Act, but the assessee failed to file such Tax Audit Report within the due date prescribed under the Act, and thus, the AO and the

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Ld.CIT(A) rightly levied penalty u/s.271B of the Act. We find that although, the assessee has not filed Tax Audit Report as required u/s.44AB of the Act, on or before due date prescribed under the Act, but such Audit Report has been filed before the AO completes assessment u/s.143(3) of the Act, which is evident from the fact that the assessee has obtained Audit Report on 30.09.2017, whereas assessment has been completed on 30.11.2018. Therefore, once the Audit Report required to be filed as per provisions of Sec.44AB of the Act, was made available to the AO, before he completes assessment, then, delay in filing of such Audit Report, penalty u/s.271B of the Act, cannot be levied. This principle is supported by the decision of ITAT Chennai Bench in the case of M/s.T P D 101 Uthangarai Milk Producers Co-operative Society Ltd. v. ITO in ITA No.152/Chny/2021 dated 29.06.2022, where the Tribunal has 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 ad 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*

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*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.*

**5.** In this view of the matter and by following the decision of the ITAT Chennai Bench in the case of M/s.T P D 101 Uthangarai Milk Producers Co-operative Society Ltd. (supra), we direct the AO to delete penalty levied u/s.271B of the Act.

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

Order pronounced on the 30<sup>th</sup> day of October, 2023, in Chennai.

**Sd/-**  
(महावीर सिंह)  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /VICE PRESIDENT

**Sd/-**  
(मंजूनाथा.जी)  
**(MANJUNATHA.G)**  
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,  
दिनांक/Dated: 30<sup>th</sup> October, 2023.  
**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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|----------------------------|---------------------------|--------------------|
| 1. अपीलार्थी / Appellant   | 3. आयकर आयुक्त / CIT      | 5. गार्ड फाईल / GF |
| 2. प्रत्यर्थी / Respondent | 4. विभागीय प्रतिनिधि / DR |                    |