

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

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

**ITA No. 224/Coch/2023 &
SA No. 38/Coch/2023**
(Assessment Year:2012-13)

Vellattanjoor Service Co-operative Bank Ltd. 348, Puliyanor Vellattanjoor, Thrissur 680601 [PAN:AABAV8416D]	vs.	The Income Tax Officer Ward – 1 & TPS Guruvayur, Thrissur
(Appellant)		(Respondent)

**ITA No. 303/Coch/2023 &
SA No. 55/Coch/2023**
(Assessment Year: 2012-13)

Vatanapally Service Co-operative Bank Ltd. Thrithallur, Chavakkad Thrissur 680619 [PAN: AAAAV5529J]	vs.	The Income Tax Officer Ward – 1 & TPS Guruvayur, Thrissur
(Appellant)		(Respondent)

Assessee by:	Shri M. Ramdas, CA
Revenue by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	19.10.2023
Date of Pronouncement:	14.11.2023

ORDER

Per Sanjay Arora, AM

The instant Appeals, by two different Assesseees, are directed against confirmation of penalty under section 271B of the Income Tax Act, 1961 ('the Act') for Assessment Year (AY) 2012-13 vide separate orders dated 30.12.2021 & 23.01.2022 by the Commissioner of Income Tax (Appeals), NFAC [CIT(A)] vide

orders dated 06.03.2023 & 29.03.2023 respectively. The appeals raising the same issue, with identical facts, were heard in tandem, and which explains a joint order.

ITA No. 224/Coch/2023

2. The assessee, a primary agricultural credit society (PACS) registered under the Kerala Co-operative Societies Act, 1969 (Kerala Act), explained the delay in the submission of the audit report u/s. 44AB of the Act, for which the impugned penalty has been levied, as on account of delayed receipt of audit certificate from the Joint Registrar of Co-operative Societies, i.e., on 31.5.2013, as against the due date of its filing u/s.44AB on 30.9.2012. The same did not find favour with the Revenue authorities, who levied penalty in the sum of Rs.1,04,310 and confirmed the same, relying on the decision in *Peroorkkada Service Co-operative Bank Ltd. vs. ITO* [2020] 424 ITR 422 (Ker). Aggrieved, the assessee is in second appeal.

3. Before us, the assessee's case was that the decision in the case of *Peroorkkada Service Co-operative Bank Ltd.* (supra) was rendered in the fact situation of the audit report u/s.44AB having not been furnished, so that the furnishing the audit report under the Kerala Act was by itself not in sufficient compliance of s. 44AB of the Act.

4. We have heard the parties, and perused the material on record.

4.1 The only question before us is whether the assessee has been able to prove reasonable cause for the delayed submission of both the audit reports, i.e., in Form 3CD as well as that under the Kerala Act, as mandated by s. 44AB and, further, clarified in *Peroorkkada SCB Ltd.* (supra), holding that only the filing of both the audit reports could be regarded as due compliance of the provision. The same, as admitted by the learned counsel for the assessee, Shri Ramdas, was furnished only on 27.04.2019, i.e., at a delay of nearly 6 years after its receipt. *Where, the Bench would question during hearing, to no answer, is the need to ascertain the reasons for the delayed furnishing of the audit reports when the same have admittedly been filed*

years after their receipt? It is only on furnishing thereof that statutory obligation u/s.44AB of the Act is satisfied, and not merely on the assessee obtaining it, *qua* which the law stands amended by Finance Act, 1995 w.e.f. 01.07.1995.

4.2 Reasonableness is essentially a matter of fact, and which would therefore need to be established in each case. Further, true, there had been submission of only one of the two reports, as required by section 44AB, in *Peroorkkada SCB Ltd.* (supra). It is this that led the Hon'ble Court to state that there was no compliance or sufficient compliance of the provision, once again exhibiting, if that was necessary, that the statutory obligation cast by s.44AB of the Act is mandatory, and cannot be regarded as a mere formality, and it's breach, by extension, technical or venial. The obligation is further independent of the filing the return of income and, thus, the ensuing assessment proceedings. Why, there may be no assessment proceedings in a particular case, as indeed is for most of the returns, and, therefore, the plea that the audit report was available at the time of assessment is without basis in law. The delay would thus need to be explained on the anvil of a reasonable cause for saving penalty u/s. 271B.

5. In view of the foregoing, we find no merit in assessee's case.

ITA No. 303/Coch/2023

6. The facts and circumstances of this case are same as that for the appeal in ITA No. 224/Coch/2023, with the corresponding dates (of receipt of audit report from the Jt. Registrar and it's filing) being 31/7/2013 and 15/5/2019 respectively. Our decision therein shall, accordingly, equally apply for this appeal as well.

7. In the result, both the assessee's appeals are dismissed and the stay applications, also filed, and posted for hearing alongwith, dismissed as infructuous.

Order pronounced in the open court on November 14, 2023 under Rule 34 of The Income Tax(Appellate Tribunal) Rules, 1963.

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: November 14, 2023
n.p.

Copy to:

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

By Order

Assistant Registrar
ITAT, Cochin