

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

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

**ITA No. 871/Coch/2022 &
SA No. 63/Coch/2022**
(Assessment Year: 2013-14)

The Mannarakkad Rural Service Co-operative Bank Ltd. 8.767, Mannarakkad Palakkad 678562 [PAN: AABAT5781D]	vs.	The Income Tax Officer Ward – 1, Palakkad
(Appellant)		(Respondent)

Assessee by:	Shri Sivadas Chettoor, 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

This is an Appeal by the Assessee directed against the confirmation of penalty under section 271B of the Income Tax Act, 1961 (the Act) for Assessment Year (AY) 2013-14 by the Commissioner of Income Tax (Appeals), NFAC, Delhi [CIT(A)] vide its order dated 13.6.2022, posted for hearing along with its stay application.

2. The assessee, a primary agricultural credit society (PACS) registered under the Kerala Co-operative Societies Act, 1969 (Kerala Act), filed its audit report u/s. 44AB of the Act for the relevant year along with its return of income on 21.06.2014 as against the due date specified therein, i.e., 31.10.2013. On being shown caused in the matter, inasmuch as the same attracts penalty under section 271B of the Act, the assessee reiterated the fact of having uploaded the audit report on 21.6.2014 along with the return of income. The assessee thus furnishing no reasonable cause for the

delayed submission of the audit report, as provided u/s.273B of the Act for saving penalty, the Assessing Officer (AO) levied penalty at the minimum amount of Rs.1,21,344, i.e., @ 0.5% on the admitted turnover of Rs.242.69 lakhs. In appeal, it was explained that the assessee's entire income (Rs.528.94 lakhs) was exempt u/s. 80P of the Act and, therefore, it was under the *bona fide* impression that it was not required to obtain tax audit report (in Forms 3CA & 3CD), which stand filed with the Department for the first time. Prior thereto it had considered the audit under the Kerala Act only as in compliance of section 44AB of the Act. Relying on the clear provisions of sections 44AB and 271B of the Act, the Id. CIT(A) confirmed the levy of penalty inasmuch as ignorance of law could not be an excuse. Aggrieved, the assessee is in second appeal.

3. Before us the assessee's case was that both the audit reports being filed on 21.6.2014, were thus before the assessing authority at the time of assessment, and that must therefore be regarded as in sufficient compliance of section 44AB of the Act, saving penalty, relying for the purpose on the decision in *Muthiah Lakshmanan vs. Asst. CIT* (in ITA No. 652/Chny/2023, dated 28.06.2023).

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

4.1 Section 44AB provides for furnishing the audit report by the due date of filing the return of income u/s.139(1) of the Act where the turnover of the assessee's business exceeds the threshold monetary limit specified therein. Further, where the assessee is required to get its accounts audited under any other law for the time being in force, the same is also to be furnished along with. Non-compliance of the provision attracts penalty u/s.271B of the Act at ½% of the turnover or Rs.1.50 lakhs, whichever is less. Proving a reasonable cause, however, saves penalty u/s. 273B.

4.2 In *Peroorkkada Service Co-operative Bank Ltd. vs. ITO* [2020] 424 ITR 422 (Ker), the imposition of penalty under section 271B r/ws. 44AB of the Act was

defended by the assessee stating that the audit was carried under the Co-operative Societies Act, which would suffice. Upholding the imposition of penalty, the Hon'ble Court held that the mere fact that the audit was conducted under the Co-operative Societies Act would not be sufficient. Even assuming (without admitting) that furnishing the audit report conducted by the competent auditor under the Kerala Act was sufficient compliance with the first limb of the second *proviso*, it was evident that further report by an Accountant (in Forms 3CA & 3CD) was not furnished by the assessee, so that there was no due compliance of section 44AB of the Act. Since the appellant had failed to show any "reasonable cause", coming within the purview of section 273B, the imposition of penalty u/s.271B cannot be interfered with. It's observations are as extracted as under:

“It is evident that if there is any failure on the part of the assessee to get his accounts audited in respect of any previous year relevant to the assessment year or if the assessee fails to furnish a report of such audit as required under section 44AB of the Income-tax Act, 1961, it is liable to penalty under that section. Section 273B provides that no penalty shall be imposed for any failure referred to in section 271B if the assessee proves that there was “reasonable cause” for the failure. Furnishing of the report of audit in the prescribed form accompanied by a further report by an accountant in the prescribed form is a mandatory requirement for proper compliance. *When the specific provision contained in the statute is unambiguous in this respect it cannot be held otherwise based on any circular of the Department.*”

The said decision by the Hon'ble jurisdictional High Court thus clarifies as:

- (a) The furnishing of audit report/s under section 44AB of the Act is mandatory;
- (b) Only furnishing both audit reports, where so required in terms of the provision, would be in due compliance thereof;
- (c) The penalty shall, however, be subject to the assessee, upon being provided opportunity for the same, unable to prove reasonable cause.

4.3 The purview of an appellate court, therefore, on a matter coming up before it, is to see if the explanation furnished, together with the materials led in support, would establish reasonable cause or not. In the facts of the instant case, the assessee's only case is that it was not aware of the requirement of law. *Could that be, one may*

ask, a valid explanation in law? The law implies a State policy, and to which the citizen is subject. Would it, one may ask, possible for an assessee to contend that it was not aware of the Act, and that therefore income earned attracts tax thereon? This is particularly so in the instant case where the assessee is presumably (i.e., going by the nature and volume of its' business) an assessee (i.e., under the Act) for long.

The explanation is not valid on facts as well. The assessee could validly argue non-conduct of tax audit under the Act, stating to have obtained the said report for the first time, only where it had furnished the other audit report, i.e., under the Kerala Act, of which it was aware, by the due date, i.e., 31.10.2013. The requirement of filing both the audit reports emanates from s. 44AB. It could not thus possibly be that the assessee is aware of one requirement and not of the other.

The explanation is accordingly not tenable either in law or on facts.

4.4 We may next consider the assessee's argument of the audit report being available at the material time, i.e., at the time of assessment, which should thus be regarded as insufficient compliance of section 44AB. The furnishing of the audit report/s u/s. 44AB stands delinked from the obligation to file return –a default whereunder is subject to penalty under a separate provision, by Finance Act, 1995, w.e.f. 01.07.1995. Even if, therefore, the assessee is not required to – as where he has no income for the relevant year, or otherwise does not his file return of income, he is yet obliged to furnish the audit report in time. Delinked thus from the obligation of filing the return, it is so from the ensuing assessment proceedings, if any, as well. Why, as posed by the Bench during hearing, to no answer by Shri Sivadas, the learned counsel for the assessee, there may be no assessment proceedings in a given case. For all we know, the information furnished through the audit report may be collated to furnish information that could guide policy framework for selecting and/or indeed the selection of returns for being subject to verification procedure under the Act, i.e.,

form the basis for initiating assessment proceedings. The argument is thus *sans* any basis in law as also on facts.

4.5 Next, we may, even as we are bound by the decision in *Peroorkkada SCB Ltd.* (supra), consider the assessee's reliance on the order by the Tribunal in *Muthiah Lakshmanan* (supra). The same is rendered relying on the decision in *P. Senthil Kumar vs. Pr. CIT* [2019] 416 ITR 336 (Mad) by the jurisdictional High Court. In the facts of that case, the assessee explained the delayed furnishing of the audit report as due to the sudden, i.e., without notice, resigning of the Auditor in August, 2012, causing dislocation of work. The same was found satisfactory by the Hon'ble Court. Its observation, alluding to *Hindustan Steel Ltd vs. State of Orissa* [1972] 83 ITR 26 (SC), that the explanation was not *malafide* and there was no conscious disregard of its statutory obligation by the assessee, is in that context, and is to be therefore read accordingly and not divorced there-from. Independent of it, reference to the decision in *Hindustan Steels Ltd.* (supra) would amount overlooking the clear provisions of section 271B r/ws. 273B of the Act, impermissible under any cannon of interpretation of statutes. In other words, section 273B provides for the necessary leeway to account for cases where, despite due care, the lapse occurs. It may also not be out of context to state that the decision in *Hindustan Steel Ltd.* (supra) is premised on the consideration that penalty, which in that case was under the Sale Tax Act, is a result of *quasi* criminal proceedings. The Hon'ble Apex Court per its decision in *UoI v. Dharmendra Textile Processors* [2008] 306 ITR 277 (SC) has clarified the penalty under section 271(1)(c) of the Act to be a civil liability. The same would hold equally for penalty u/s.271B, which is though subject to s. 273B.

5. In view of the foregoing, we confirm the levy of the impugned penalty. We having decided the appeal, the assessee's stay application becomes infructuous. We decide accordingly.

6. In the result, the assessee's appeal and stay application are dismissed.

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