

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

Before Shri Sanjay Arora, Accountant Member and
Ms. Kavitha Rajagopal, Judicial Member

ITA No.372/Coch/2023 : Asst.Year 2017-2018

Mugu Service Co-operative Bank Ltd. Mugu PO., Kasargode – 671 321. [PAN:AACAM7915R]	vs.	The Income Tax Officer Ward 1, Kasargode.
(Appellant)		(Respondent)

Appellant by:	Sri.Alan P.Dev, Advocate
Respondent by:	Smt.J.M.Jamuna Devi, Sr.DR

Date of Hearing:	15.02.2024
Date of Pronouncement:	07.03.2024

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the Assessee, a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 (Kerala Act), agitating the Order dated 23.03.2023 by the Commissioner of Income-tax (Appeals) [CIT(A)], dismissing it's appeal contesting the levy of penalty under section 271B of the Income Tax Act, 1961 (the Act) for assessment year (AY) 2017-18 vide order dated 16.07.2021.

2. The issue arising in appeal is the maintainability in law of the penalty u/s.271B in the facts and circumstances of the case; the assessee filing the tax audit report (in Forms 3CA and 3CD) along with the audit report under the Kerala Act, as required u/s.44AB of the Act, though with a delay of 62 days. These facts and the concomitant delay being admitted; in fact, borne out by the record, the only question that survives is if the assessee, in the facts and circumstances of it's case, qualifies for the saving of s.273B, which provides for non-imposition of penalty, *inter alia*, u/s.271B, where

the assessee shows a reasonable cause. Toward this end, the assessee's case, which though did not find favour with the Revenue authorities, is that this is for the reason that the audit report from the Joint Registrar (Kerala Co-operative Societies) dated 27.12.2017 was received only on 30.12.2017. The assessee moved with dispatch thereafter, and obtained the tax audit report on 08.01.2018, furnishing both on 08.01.2018 itself. The same, however, being beyond the specified date for the relevant year, i.e., 07.11.2017, penalty stands levied and confirmed on the ground that the assessee had failed to substantiate reasonable cause for the delay.

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

3.1 The primary facts of the case are admitted. The facts of a case, as explained in *Saroj Aggarwal v. CIT* [1985] 156 ITR 497 (SC), must be viewed in their natural perspective, having regard to the compulsions of the circumstances of the case. Where it was possible to draw two inferences from the facts, and where there was no evidence of any dishonest or improper motive on the part of the assessee, it would be just and equitable to draw such inference in such a manner that would lead to equity and justice. Too hyper technical or legalistic approach should be avoided in looking at a provision, which must be equitably interpreted and justly administered.

3.2 It is nobody's case that in the instant case the assessee had not furnished its accounts for audit to the Joint Registrar for audit in time, or as required by it and, further, not responded to its queries, if any, raised or sought from time to time. The same, though material, we are not inclined to restore the matter for such inquiry back to the AO, particularly considering the extent of the delay as well as the assessee's conduct subsequent to the receipt of the audit report from the office of the Jt. Registrar, establishing its *bona fides*, which are of prime relevance in penalty proceedings. It is, after all, not in the assessee's control to obtain the audit report from the Jt. Registrar. In this context, it needs to be appreciated that as against obtaining a tax audit report, or indeed a statutory audit report, as under the

Companies Act, which are to be from independent auditors, who could be pursued in the matter, and are obliged by law to limit the number of auditees, a cooperative society under the Kerala Act is by law obliged to get its accounts audited only from the specified Authority thereunder, who is to conduct the annual audit of accounts of all such societies and, further, within the time limit prescribed under the Act. Once therefore the assessee has done all it could within its means in the facts and circumstance of its case, visiting it with penalty – which cannot be a result of a mechanical exercise, defeating the purpose and intent of s. 273B, would be unfair. In this view of the matter, we think that the assessee's case qualifies for non-imposition of the impugned penalty.

3.3 We may though clarify that we are not in agreement with the assessee that the default u/s. 44AB, which attracts penalty u/s.271B, is a technical or venial breach of law, particularly where the audit reports are furnished during the course of the assessment proceedings, which plea the assessee also banks on with reference to some case law. This aspect stands considered in detail per several decisions by this Bench of the Tribunal. Besides, the decision in *Peroorkada SCB Ltd. v. ITO* [2020] 424 ITR 422 (Ker), binding on us, would allay all doubts in the matter. In the facts of that case, the assessee, who had furnished only the audit report from the Jt. Registrar, contended, on that basis, sufficient compliance of s. 44AB. The same did not find approval of the Hon'ble Court, which held that only furnishing both the reports, as mandated by the provision, would be in sufficient compliance of the law.

4. To conclude, the assessee has been able to reasonably demonstrate existence of a reasonable cause for the two-month delay attending the compliance of the provisions of s. 44AB. The Revenue has, in our view, acted mechanically inasmuch as there is nothing to suggest that the assessee's conduct is, as claimed, not *bona fide*. The impugned penalty is accordingly directed for deletion. We decide accordingly.

5. In the result, the assessee's appeal is allowed.

Order pronounced on March 07, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: March 07, 2024

Devadas*

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