

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.910/Kol/2023
Assessment Year: 2016-17**

Singur Thana LSPA Co-operative Marketing Society Ltd. C/o S. N. Ghosh & Associates, Advocates, 2, Garstin Place, 2 nd floor, Suite No. 203, Off Hare Street, Kolkata-700 001. (PAN: AABAS0029B)	Vs.	Assistant Commissioner of Income Tax, circle 23(1), Hooghly.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Somnath Ghosh, Advocate
Respondent by : Shri Umakanta Dhrupati, Addl. CIT, DR

Date of Hearing : 13.03.2024
Date of Pronouncement : 18.03.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/2022-23/1050783410(1) dated 15.03.2023 passed against the assessment order by ACIT, circle-23(1), Hooghly u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 06.12.2018 for AY 2016-17.

2. The only issue raised by the assessee in the present appeal is in respect of imposition of penalty of Rs.1,48,093/- u/s. 271B of the Act for not complying with the provisions of section 44AB of the Act relating to furnishing of audit report within the prescribed due date.

3. There is a delay of 108 days in filing the present appeal. Considering the submissions made by the assessee to explain the reasons for delay and relevant documentary evidence in respect of the said delay in filing the present appeal before the Tribunal, we find it appropriate to condone the delay and adjudicate the matter on merits.

4. Brief facts of the case are that assessee is a Cooperative Society engaged in trading of fertilizer, supply of water for agriculture, providing loans and advances to its members and also runs a ration shop. Assessee is registered under the West Bengal Cooperative Societies Act, 2006. Assessee filed its return of income on 03.01.2018 reporting nil income after claiming deductions u/s. 80P of the Act. Along with the return, assessee also uploaded the tax audit report on the same date i.e. on 03.01.2018. During the assessment proceedings completed u/s. 143(3) vide order dated 06.12.2018, AO noted that assessee had filed its return of income for the concerned assessment year on 03.01.2018 along with tax audit report dated 03.01.2018 which is far later than the due date of 30.09.2016. Accordingly, penalty proceedings u/s. 271B is applicable in this case.

4.1. In the penalty proceeding so initiated by the AO, he imposed a penalty of Rs.1,48,093/- by upholding that assessee has failed to get its accounts audited and furnished a report of such audit as required u/s. 44AB of the Act. In the said penalty proceeding, assessee had submitted that the consequence of delay in appointment of statutory auditor by the Director of Cooperative Societies, West Bengal for the purpose of section 97(1) of the West Bengal Cooperative Societies Act, 2006, who completed his audit on 31.03.2017, led to delay in getting the audit done u/s. 44AB of the Act for which the auditor was

appointed in the Annual General Meeting. The said audit was completed on 03.01.2018 for which the report was e-filed on the same date. The said explanation did not impress the AO and thus imposed the aforesaid penalty. Aggrieved, assessee went in appeal before the Ld. CIT(A), who confirmed the same by placing reliance on several judicial precedents. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, Ld. Counsel for the assessee submitted that since the assessee is a Cooperative Society and is registered under the West Bengal Cooperative Societies Act, 2006, it is required to get its accounts audited under the said enactment as prescribed in section 97(1)(b) of the same. According to the said section, the audit of the accounts is to be carried out by the auditor of the Director of Cooperative Societies or by any person appointed or authorised by it. He thus submitted that assessee has neither any control on the appointment of the statutory auditor nor could force him to complete the audit within the prescribed time. He submitted that since the statutory auditor completed the audit under the relevant societies Act on 31.03.2017, it was not possible for the assessee to meet the compliance requirement of getting the tax audit done within the due date under the prescribed section 44AB of the Act.

5.1. He thus, contended that failure to comply to the tenets of section 44AB was due to a reasonable cause covered by section 273B of the Act. According to him, the expression reasonable cause as provided in section 273B of the Act should be construed liberally so as to advance substantial justice. The reason for the default in the present case has not been denied by the authorities below nor there is any lack of

bonafides which has been proved against the assessee. He also referred and placed reliance on the decision of the Coordinate Bench in the assessee's own case for AY 2009-10 wherein similar penalty was imposed u/s. 271B of the Act which was deleted in ITA No. 2396/Kol/2013 dated 03.06.2016.

6. We have heard the rival contentions and perused the material available on record. Admittedly, in the present case, audit report was obtained by the assessee though on a date later than prescribed due date and was filed along with return of income beyond the due date. The issue to be looked into is whether the assessee had a reasonable cause vis-à-vis the default envisaged u/s. 271B of the Act

6.1. Assessee has attributed reason for not getting its accounts audited within the due date by the statutory auditor as required under the West Bengal Cooperative Societies Act, 2006 since the statutory auditor under the Cooperative Societies Act was to be appointed by the Cooperative Department and such appointment as well as conduct and completion of the audit by the statutory auditor was beyond the control of the assessee. We find merit in the submissions made by the Ld. Counsel of the assessee that there exist a reasonable cause for the delay for its failure to comply with the requirement of section 44AB. The assessee had furnished the tax audit report along with its return on 03.01.2018 and the same was thus available to the AO while making the assessment for the year under consideration. The delay on the part of the assessee in obtaining and furnishing the tax audit report by the specified due date was thus technical or venial in nature

6.2. Further, we note that Ld. CIT(A) has observed that assessee has not furnished any evidence in respect of delay in the conduct of statutory audit under the Cooperative Societies Act as claimed by it. In this respect, we note that the audited accounts furnished by the assessee have been signed by the auditor dated 31.03.2017. Also, the audit report furnished by the statutory auditor under the Cooperative Societies Act is of the same date i.e. 31.03.2017 which in itself is an evidence that this statutory audit was completed on this date which led to the delay in obtaining and furnishing the tax audit report as required u/s. 44AB of the Act. Also, Ld. CIT(A) has placed reliance on several judicial precedents, none of which are related since assessee in the present case is a Cooperative Society covered under the Cooperative Societies Act which is required to get its account audited under the relevant Cooperative Societies Act.

6.3. Having looked into all these facts and circumstances of the case, we thus hold that there exists a reasonable cause within the meaning of section 273B for the delay in obtaining and furnishing the tax audit report required u/s. 44AB and thus, no penalty u/s. 271B is imposable. Accordingly, the penalty so imposed of Rs.1,48,093/- is deleted.

7. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 18th March, 2024.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 18th March, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata