

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

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

**ITA No. 352/Coch/2023
& SANO. 96/Coch/2023**
(Assessment Year: 2017-18)

Pattathanam Service Co-op. Bank Ltd. Pattathanam P.O. Kollam 691021 [PAN: AACAP4888Q]	vs.	Income Tax Officer Ward -2, Kollam
(Appellant)		(Respondent)

Appellant by:	Shri Sabu C.S., CA
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	07.02.2024
Date of Pronouncement:	26.03.2024

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the Assessee directed against the dismissal of it's appeal by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)] vide it's Order dated 13.03.2023, agitating the levy of penalty under section 271B of Income Tax Act, 1961 ("the Act") for Assessment Year (AY) 2017-18 vide order dated 11/01/2022. The assessee has also filed a stay petition *qua* it's instant appeal.

2. Section 271B of the Act provides for a levy of penalty where an assessee contravenes, without reasonable cause, the provision of s. 44AB of the Act, which provides for furnishing the audit report there-under in the prescribed form, as also the audit report under any other law under which it is required to get it's accounts audited, by the specified date, being the due date of furnishing the return of income u/s. 139(1) of the Act for the relevant year. The same were admittedly not filed by

the said date, i.e., 30.09.2017. The assessee did not respond to the show-cause notice u/s. 274 of the Act; the Assessing Officer (AO) having observed the contravention in the assessment order dated 07.12.2019 (copy on record), leading him to infer the default as being without reasonable cause, which saves penalty u/s. 273B of the Act. In appeal, the assessee relied on the decision in *T.T. Kuruvilla vs. Dy. CIT* (in ITA No. 504/Coch/2018, dated 22.01.2019) to the effect that filing the audit report during the assessment proceedings was a sufficient compliance of the provisions of s. 44AB of the Act. The same did not find favour with the Id. CIT(A), who accordingly confirmed the penalty, issuing a finding, vide para 5.2 of his order, that no reasonable cause had been submitted by the assessee for not filing the audit report in time. Aggrieved, assessee is in second appeal.

3. Before us Sh. Sabu, the learned counsel for the assessee, pleaded that it being a co-operative society, whose income is exempt u/s. 80P of the Act, was under a *bona fide* impression that it was therefore not required to furnish any return of income, which also explains the non-furnishing of the audit report, which was in fact filed on 30.3.2018, i.e., along with the return of income for the relevant year, so that no prejudice is caused to the Revenue. Smt. Devi, the Id. Sr. DR, would, relying on the orders by the Revenue authorities, submit that no case stands made out at any stage.

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

4.1 Without doubt, ignorance of law is not sustainable in law as a reasonable cause. The assessee, a para bank, well served by CAs/Counsels, cannot, in fact, but be aware of the provisions of law, which it in fact is, evident from the fact that it files *suo motu* the return of income claiming deduction u/s. 80-P, saving itself thus from the rigor of s. 80A(5). The obligation to file an audit report/s stands in fact delinked (by Finance Act, 1995 w.e.f. 01.07.1995) from the filing of the return of income vide amendment to section 44AB thereby, so that even that filed on 30/3/2018 contravenes s. 44AB. The said plea, raised before us for the first time, and even

otherwise not maintainable in law, is thus false, validating the Revenue's finding of no reasonable cause having been advanced, much less proved, as required by s. 273B, for the clear default of s. 44AB of the Act, attracting penalty u/s. 271B.

4.2 As regards the contention of having filed the tax audit report in Form 3CD on 30.3.2018, so that no prejudice is caused to the Revenue; the same is again misplaced in law. There is firstly no contention as to the assessee having also filed along with the audit report under the Kerala State Cooperative Societies Act, 1969 (Kerala Act), under which it is registered as a (primary agricultural credit) society, and which in turn forms the basis of its claiming deduction u/s. 80P(1) r/w s. 2(19) of the Act. The Hon'ble Court in *Perrorkkada SCB Ltd. v. ITO* [2020] 424 ITR 422 (Ker) clarified that only filing both the reports, i.e., the tax audit report prescribed u/s. 44AB, as well as the report on its accounts as required under any other law for the time being in force, in time, would only be regarded as in compliance with the law. There is, as afore-mentioned, no claim at any stage, including before us, of the assessee having filed the report under the Kerala Act at any time, much less by the due date u/s. 139(1) of the Act, or even along with the return on 30.3.2018. There has been, as such, no compliance of the provision of s. 44AB even till now and, in any case, up to the date of the completion of assessment. The same also takes care of the assessee's plea of the default u/s. 44AB being of a technical or venial nature, an argument in fact unavailable in view of the decision in *Perrorkkada SCB Ltd.* (supra).

4.3 Continuing further, without prejudice to the foregoing, the default being admitted, the purview of an appellate court in review proceedings, is only w.r.t. the reasonable cause attending the delay. As such, nothing turns on the report being available with the AO at the time of the assessment proceedings. The constitutionality of both the provisions, ss. 44AB and 271B, stands upheld, which is even otherwise the presumption in law unless the same is, on challenge, struck down,

so that the law thus deems a prejudice to the Revenue on the non-compliance of s. 44-AB. Questioning the legislative wisdom in defining the 'default' in the manner done therein, i.e., non-filing the audit report/s by the specified date without reasonable cause, is thus beyond the purview of an appellate court or authority under review proceedings. A reasonable cause has thus necessarily to be with reference to the delay in complying therewith, i.e., *qua* the default, and there is no legal basis for travelling to the consequences thereof for the Revenue. That is, the consequences that the Revenue may or may not bear on account of the default are outside the scope of the instant proceedings, even as one could cite some. Why, even as observed by the Bench during hearing, there may be cases where the return of income is not subject to the verification procedure under the Act, so that there is no occasion for the assessee to file the audit report/s during the assessment proceedings, signifying the same to be an irrelevant consideration. Much less, then, the assessment proceedings, w.r.t. which the assessee justifies substantial compliance, the obligation to file the audit report/s is under the Act, as afore-noted, even independent of returning income. Reference to 'consequences', and interpreting the provision on that basis, is thus impermissible. The analogy w.r.t deduction u/s. 80J of the Act in this regard is misplaced inasmuch as the same has a direct bearing on the assessment of income, to which the audit certificate there-under, duly furnished, relates. The assessee's reliance on *T.T. Kuruvilla* (supra), even otherwise invalid in view of the non-filing of the audit report under the Kerala Act, is again misplaced in view of the decision in *Perrorkkada SCB Ltd.* (supra), binding on this Tribunal and, in fact, followed per its several orders since.

5. The assessee's case is, thus, a non-starter and, in any case, wholly without merit. We decide accordingly, which also renders its stay application infructuous.

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

Order pronounced on March 26, 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 26, 2024

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