

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH: COCHIN
(By virtual hearing)**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.286/Coch/2023
Assessment Year: 2017-18

Thekkekunnathu Muhammed Fayas A 24 Basement Penta Menaka Shanmugham Road Ernakulam 682 032 Kerala PAN NO : AAJPF4877B	Vs.	DCIT, Range 10, Corporate Circle-1(1) Kochi
APPELLANT		RESPONDENT

Assessee by	:	Sri Alwyn Cleetus, A.R.
Revenue by	:	Sri Ilaiyaraja K.S., Sr. D.R.

Date of Hearing	:	01.07.2024
Date of Pronouncement	:	01.07.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2017-18 dated 22.2.2023, wherein he has confirmed the levy of penalty u/s 271B of the Income Tax Act, 1961 (in short "The Act").

2. The ld. AO levied penalty u/s 271B of the Act for non-filing audit report within due date. The due date for filing the audit report was 30.9.2017. According to the assessee, it was filed on 17.2.2018 though the audit report got obtained on 30.9.2017.

3. The contention of the ld. A.R. is that due to technical glitch in the ITBA portal, assessee failed to upload the audit report in time, which is a technical breach which cannot be considered to levy penalty u/s 271B of the Act.

4. On the other hand, ld. D.R. submitted that furnishing of audit report is mandatory in nature and assessee failed to submit audit report in time, so penalty should be levied u/s 271B of the Act.

5. We have heard the rival submissions and perused the materials available on record. In this case, the assessee's books of accounts were audited u/s 44AB of the Act by 30.9.2017. Accordingly, the assessee has filed the return of income. However, it was not accompanied with audit report u/s 44AB of the Act and it was filed only on 17.2.2018. Accordingly, ld. AO invoked the provisions of section 271B of the Act and levied penalty of Rs.1,50,000/- as there was a delay in filing the audit report on the part of the assessee.

5.1 In our opinion, the assessee in this case has committed only technical breach which created no loss to the exchequer of the Government as there was no addition made during the course of assessment.

5.2 Hon'ble Madras High Court in the case of CIT Vs. A.N. Arunachalam reported in 208 ITR 481 in the context of filing audit report availed deduction u/s 80J of the Act observed that claim once the audit report has been made available before ld. AO or before the completion of assessment proceeding, the assessee should be granted deduction/s 80J of the Act.

5.3 We observe that this judgement was rendered in the context of adjudication of quantum deduction claimed by the assessee. Hence, the said analogy can very well be used in the penalty proceeding like the case of the assessee. To sum up, we hold that assessee had only technical breach for which no penalty be levied.

5.4 Further, even otherwise, the ld. AO is unsure whether audit report is required u/s 44AB of the Act was not obtained at all and it was not obtained within due date, the assessee has categorically stated that audit report has been obtained within the due date i.e. before 30.9.2017, penalty levied u/s 271B of the Act could not be

sustained, even if the audit report is not filed along with return of income. For this purpose, we place reliance on the order of the Tribunal in the case of Pawan Cotton Mills Vs. ITO (90 TTJ 1057).

5.5 Further, Hon'ble jurisdictional High Court in the case of ACIT & Another Vs. Dr. K. Satish Shetty (2009) 310 ITR 366 (Karn.), wherein held that "assessee was required to e-file the audit report for the first time and prior to that no such reports were being furnished. Hence, the penalty should not be levied." Accordingly, we delete the penalty levied by the ld. AO in this case.

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

Order pronounced in the open court on 1st July, 2024

Sd/-
(Soundararajan K.)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 1st July, 2024.
VG/SPS
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.