

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

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA No.551/Coch/2023 : Asst.Year 2015-2016
&
SA No.213/Coch/2023

ITA No.552/Coch/2023 : Asst.Year 2015-2016
&
SA No.214/Coch/2023

ITA No.553/Coch/2023 : Asst.Year 2016-2017
&
SA No.215/Coch/2023

Kottamkara Service Co-operative Bank Limited, No.Q-132, Chandanathope PO Kottamkara, Kollam – 691 014. PAN : AAFAK4690Q.	v.	The Income Tax Officer Ward – 2 Kollam.
(Appellant/Applicant)		(Respondent)

Appellant by : Sri.Sabu C.S., CA
Respondent by : Smt.V.Swarnalatha, Sr.DR

Date of Hearing : 16.08.2024	Date of Pronouncement : 16.08.2024
-------------------------------------	---

ORDER

Per Bench :

These assessee's three appeals ITA No.551/Coch/2023 and ITA No.552/Coch/2023 & 553/Coch/2023, arise against the CIT/NFAC, as many DIN & Order Nos.ITBA/NFAC/S/250/2023-24/1053008855(1) dated 19.05.2023 (for asst.year 2015-2016), ITBA/NFAC/S/250/2023-24/1052916358(1) dated 17.05.2023 (for asst.year 2015-

2016) & ITBA/NFAC/S/250/2023-24/1052916271(1) dated 17.05.2023 (for asst.year 2016-2017), in proceedings u/ss.271B & 147 r.w.s. 144 of the Income-tax Act, 1961; in short “the Act” hereinafter, assessment year-wise, respectively. The assessee has also filed the instant SA Nos.213/Coch/2023, 214/Coch/2023 & 215/Coch/2023 for stay of outstanding demand(s).

Heard both parties at length. Case files perused.

2. We come to assessee’s former twin appeals ITA Nos.551 & 552/Coch/2023 relating to assessment year 2015-2016. Learned Departmental Representative vehemently submits in ITA No.551/Coch/2023 that both the lower authorities have rightly levied the impugned sec.271B penalty in assessee’s case as it had failed to file the relevant tax audit report in the prescribed format before the “due” date as per the provisions of the Act. Learned Counsel, on the other hand, clarifies that we are in sec.148 proceedings which culminated in reassessment framed by the Assessing Officer on 22.09.2021 whereas the concerned tax audit report had already been filed as well before that on 20.09.2021. Learned counsel attributes the delay in filing of the assessee’s tax audit report not only due to various procedural approvals as well as delay in statutory audit in the office of the registrar of co-operative societies but also due to management issues. Faced with this situation, we conclude that the assessee has been able to prove a reasonable cause u/s.273B explaining in filing of the tax audit report. Accordingly, sec.271B penalty stands deleted

thereon. This assessee's first and foremost appeal ITA No.551/Coch/2023 is accepted.

4. We now advert to the assessee's former quantum appeal ITA No.552/Coch/2023 for assessment year 2015-2016. Learned DR quotes sec.80A(5) of the Act to vehemently contest the assessee's sec.80P deduction claim on the ground that once this is not raised in the return, such an inherent defect could not be made good in all later proceedings.

5. We have given a thoughtful consideration to the Revenue's foregoing technical arguments. Learned counsel, on the other hand, has filed before us the assessee's e-returns acknowledgement for both the assessment years herein, i.e., asst.years 2015-2016 and 2016-2017 and contends that the latter not only filed e-returns but also they stood e-verified on September 20, 2021. He further quotes case law *Chirakkal Service Co-operative Bank Ltd. v. CIT [(2016) 384 ITR 490 (Ker.)]* that even such a claim is raised in belated return, the same should not be rejected for technical reasons. We find force in the assessee's arguments prima facie and hold that the Revenue's instant technical objection quoting sec.80A(5) does not deserves to be accepted. The fact also remains that the Assessing Officer nowhere applied his mind for sec.80P deduction on merits in further round. We thus restore the assessee's appeal ITA No.552/Coch/2023 to the Assessing Officer for his due adjudication in sec.80P claim on merits. Identical factual position exists in the latter assessment year 2016-2017 as well involving assessee's third and last appeal

ITA No.553/Coch/2023. We thus conclude that both the assessee's appeals deserve to be restored back to the Assessing Officer for his afresh appropriate adjudication as per law subject to rider that the taxpayer itself shall plead and prove its case within three effective opportunities only; at its own risk and responsibility in consequential proceedings. Ordered accordingly.

6. The assessee's three corresponding stay applications No.213 to 215/Coch/2023 stand rendered academic once we have decided the main appeals itself.

7. To sum up, assessee's former appeal ITA No.551/Coch/2023 is allowed and latter twin appeals ITA Nos.552 & 553/Coch/2023 are allowed for statistical purpose in above terms. It's stay applications Nos.213/Coch/2023, 214/Coch/2023 & 215/Coch/2023 are dismissed as rendered infructuous. A copy of A copy of the common order be placed in the respective case files.

Order pronounced in the open court on this 16th Day of August, 2024.

Sd/-
(Amarjit Singh)
ACCOUNTANT MEMBER

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

Cochin ; Dated : 16th August, 2023.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Concerned.
4. The CIT Concerned.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin