

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

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

ITA No.667/Coch/2023 : Asst.Year 2017-2018

ITA No.879/Coch/2023 : Asst.Year 2017-2018

Kolloorvila Service Co-operative Society Limited, Q-214, Vadakkevila PO Kollam – 691 010. <b>PAN : AAAAK8621N.</b>	v.	The Income Tax Officer Kollam.
(Appellant)		(Respondent)

Appellant by : ---- None ----

Respondent by : Smt.V.Swarnalatha, Sr.DR

<b>Date of Hearing : 13.08.2024</b>	<b>Date of Pronouncement : 13.08.2024</b>
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**ORDER**

**Per Bench :**

These assessee's twin appeals ITA No.667/Coch/2023 and ITA No.879/Coch/2023, both for the assessment year 2017-2018, arise against the CIT/NFAC, as many DIN & Order Nos.ITBA/NFAC/S/250/2023-24/1054594166(1) dated 26.07.2023 and & ITBA/NFAC/S/ 250/2023-24/1057452213(1) dated 27.10.2023, in proceedings u/s.271B & 143(3) of the Income-tax Act, 1961; in short "the Act" hereinafter, respectively.

Case file perused.

Case called twice. None appears at assessee's behest. It is accordingly proceeded *ex parte*.

2. The assessee's former appeal ITA No.667/Coch/2023 raising following substantive grounds:-

*"1. Assessee is a Co-operative Society registered under Travencore-Cochin Co-Operative Societies Act 1951 carrying on the business of banking or providing credit facilities to its members.*

*2. Assessee filed return of income for the assessment year 2017-18 on 19.01.2018 along with the tax audit report under Section 44AB of the Income Tax Act declaring a gross total income of Rs.22923446/- and claiming eligible deduction under Section 80P of the Income Tax Act 1961 and the total income comes to Rs.3252313/-.*

*3. The Assessing Authority completed the assessment year 2017-18 under Section 143(3) of the Income Tax Act 1961 on 19.12.2019 and served a penalty notice under Section 271B of the Income Tax Act along with the assessment order alleged that the audit report under Section 44AB of the Income Tax Act is not furnished. The assessee filed reply on 17.06.2020 explaining the fact that the assessee furnished audit report as prescribed under Section 44AB of the Income Tax Act on 19.01.2018. There was a delay of 72 days in furnishing the tax audit report because the assessee society obtained final audit report from the Cooperative Department only on 31.10.2017. It is pertinent to note the fact that the audited statement of accounts obtained from the Co-operative Department is not prepared in accordance with the accepted accounting principles and accounting standards; hence the tax auditor cannot blindly complete the tax audit based on the same.*

*3. The original tax audit of the said account starts as and when the audit of the Co-operative Department is finally completed which is beyond the control of the assessee society. Hence the 72 days delay in furnishing the tax audit report under section 44 AB of the Income Tax Act comes under the purview of reasonable cause and enunciated under Section 273(B) of the Income Tax Act.*

*4. Without considering the replay furnished by the assessee society the assessing authority passed order under Section 271(B) of the Income Tax Act 1961 imposing maximum penalty of Rs.150000/-on 02.03.2022.*

5. Aggrieved by the order imposing penalty the assessee preferred appeal before the first Appellate Authority on 02.07.2022. the first Appellate Authority without granting opportunity for personal hearing and does not consider the argument note filed by the assessee society rejected the appeal by confirming the order of the assessing authority in an arbitrary manner by order dtd.26.07.2023 hence the assessee preferred this second appeal.

6. The genuineness of the delay in obtaining/completing the audit of the accounts is unnecessarily suspected by the assessing authority but the first appellate authority without go through the genuiness of the contention of the Assessing Authority simply says that there was overwriting in the audit certificate of the Co-operative Department which is produced here with and marked as Exhibit P1. The date of the audit report is clear and legible as 31-10-2017. To substantiate this contention a separate certificate from the Joint Director (Audit), Co-operative department Kollam that the date of the audit report is 31-10-2017. The said certificate is produced here with and marked as Exhibit P2.

7. The Appellate Authority does not go through the correct perspective of the decision of the Hon'ble Income Tax Appellate Tribunal 'A' Bench, Chennai in ITA.No.01/Chny/2022 dtd.05.05.2022 of Erumappalayam Primary Agricultural Cooperative Society, Salem v/s ITO ward 1(6), Salem, because the Honorable Tribunal clearly found that "there was sufficient cause for late filing of return of income and Audit Report. The assessee was subjected to audit under Tamilnadu Co-operative Societies Act 1983, and relevant rules made thereunder. The matter of appointment of auditor and completion of audit was not in the control of the assessee".

8. The case of the assessee society is similar to that of the same case. Since the appointment and audit of the society is subject to the Kerala Co-Operative Societies Act, and relevant rules made thereunder; hence the assessee society have no control over the same.

9. The delay in completing the final audit report of the Co-Operative Department is a reasonable cause for delay in furnishing the Tax Audit report U/S 44AB of the Income Tax Act 1961. Since the tax auditor could not start tax audit without obtaining the final audit report of the Co-operative Department.

10. Considering the nature and volume of the business of the society, the time period of 72 days for furnishing the tax

*audit report in Form 3CB and 3CD along with the return of income for the relevant assessment year 2017-18 comes under the purview of reasonable cause as enunciated U/S 273B of the Income Tax Act 1961. 3. There is no correction in Exhibit P1 Audit Certificate issued by the Co-Operative Department, which is substantiated by Exhibit P2 certificate issued by the Joint Director (Audit), Co-Operative Department.*

*11. The decision of the Hon'ble Income Tax Appellate Tribunal 'A' Bench, Chennai in ITA.No.01/Chny/2022 dtd.05.05.2022 is squarely applicable to the assessee society's case; because the delay in completion of the final audit report by the Co-operative Department is beyond the control of the assessee society; hence further delay in furnishing the tax audit report and return of income comes under the purview of reasonable cause as enunciated U/S 273B of the income tax Act 1961.*

*12. For the above and other grounds to be raised at the time of hearing the appeal may be allowed.”*

3. Learned DR vehemently submits that both the lower authorities have rightly levied the impugned sec.271B penalty on account of assessee's delay in filing its tax audit report(s) during the course of assessment. The assessee admittedly filed its tax audit report before the Learned Assessing Officer albeit with a delay of 72 days as it is pleaded in the above extracted grounds. That being the case, we are of the considered view that the impugned delay of 72 days is indeed attributable to various procedural approvals as the assessee-society is governed by provisions of state co-operative law. We accordingly conclude that the impugned delay has involved assessee's reasonable cause within the meaning of sec.273 of the Act to delete the impugned 271B penalty. In this peculiar facts and circumstances, this assessee's former appeal ITA No.667/Coch/2023 stands accepted in very terms.

4. Coming to the later appeal ITA No.879/Coch/2023 involving 154 rectification, we note on perusal of the case that the CIT(A)/NFAC has refused to condone 30 days delay as not properly explained. The assessee had explained the reasons thereof to illness of his Counsel. Be that as it may, the hon'ble apex court in Collector, Land Acquisition v. MST.Katiji and Others (1987) 167 ITR 471 (SC) settled long back all such technical reasons. Faced with this situation, we condone 30 days delay and restore the assessee's substantive ground raised herein back to the CIT(A)/NFAC for its appropriate afresh adjudication subject to the 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. This later appeal ITA No.879/Coch/2023 is accepted for statistical purposes.

5. To sum up, the assessee's former appeal ITA No.667/Coch/2023 is allowed and later appeal ITA No.879/Coch/2023 is allowed for statistical purposes in above terms. A copy of the common order be placed in the respective case files.

Order pronounced in the open court on this 13<sup>th</sup> Day of August, 2024.

**Sd/-**  
**(Amarjit Singh)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Satbeer Singh Godara)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 13<sup>th</sup> August, 2024.  
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