

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

<b>S.P. No. 27/Coch/2023 (in ITA No. 125/Coch/2023) &amp; ITA No. 125/Coch/2023</b>
<b>Assessment Year : 2017-18</b>

M/s. The Ezhupunna Service Co-operative Society Ltd., Ezhupunna P.O., Cherthala - 688 548. <b>PAN: AAABT2580J</b>	<b>Vs.</b>	The Income Tax Officer, Ward - 2, Alappuzha.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri C.A. Jojo, Advocate
Revenue by	:	Smt. Girly Albert, Senior DR.

Date of Hearing	:	10-09-2024
Date of Pronouncement	:	18-09-2024

**ORDER**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER**

This is an appeal filed by the assessee challenging the orders of the NFAC dated 13/01/2023 (along with stay application therein) in respect of the assessment year 2017-18.

**2.** The brief facts of the case are that the assessee filed their return of income on 19/03/2018 as against the due date for filing the same on

31.07.2017. Thereafter the assessee filed the audit report on 09/08/2018. in form no. 3CB of the act. The return was processed and assessment was completed u/s. 143(3) of the act by accepting the returned income of the assessee. But the Ld.AO levied penalty u/s. 271B of the Act for the reason that the audit report was filed beyond the due date for filing the return of income. The assessee explained the reasons for filing the return belatedly and submitted that the audit report was filed before the assessment has been completed and also pointed out that there was no loss of revenue to the department. In spite of the above submissions, the AO confirmed the levy of penalty and therefore the assessee filed an appeal before the Ld.CIT(A) and also relied on the various orders of the Tribunal and prayed to allow the appeal since the delay was properly explained. The Ld.CIT(A) dismissed the appeal on the ground that there is no sufficient cause for filing the return belatedly.

**3.** As against the above said order, the assessee filed this appeal before the Tribunal with the following grounds.

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal (see note below)</i>
1.	<i>Penalty for not submitting the audit report is erroneous. The tax audit report was furnished immediately after getting the statutory audit report from Co-operative Audit Department on 09.08.2018. The assessment was completed considering the audit report. Hon'ble ITAT cochin bench has held that in cases where the tax audit report is filed before the completion of assessment, penalty u/s 271B shall not be imposed.</i>	<i>Rs. 1,50,000/-</i>
2.	<i>Penalty u/s Section 271B is applicable for (1) failure to get accounts audited; or (2) failure to furnish report of such audit. The scope of Section 271B cannot be expanded for non-compliance of Section 44AB. Penalty u/s 271B cannot be imposed for not completing the audit or not furnishing the report in time</i>	<i>Rs. 1,50,000/-</i>

3.	<i>The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal.</i>	Rs. 1,50,000/-
<i>Total tax effect (see note below)</i>		Rs. 1,50,000/-

**4.** At the time of argument, the Ld.AR contended that the assessee is under the control of the Registrar of Coop Societies, Kerala and he will appoint the Auditors. During the year the Registrar had appointed the auditors belatedly and therefore, the audit could not be completed in time and therefore the report was not filed in time. The Ld.AR further contended that anyhow the audit report was filed before passing the assessment order and relied on the following judgments of the various Hon'ble High Courts.

- *Decision of Hon'ble Madras High Court in case of Thanjavur Silk Handloom Weavers Co-operative Production & Sales Society Ltd. vs. Union of India reported in (2003) 263 ITR 334*
- *Decision of Hon'ble Rajasthan High Court in case of Rajasthan Co-operative Dairy Federation Ltd. vs. DCIT reported in (2003) 259 ITR 126.*
- *Decision of Hon'ble Uttarakhand High Court in case of CIT & Anr. vs. IQBLPUR Co-operative Cane Development Union Ltd. reported in (2013) 356 ITR 343.*
- *Decision of Hon'ble Punjab & Haryana High Court in case of CIT, Karnal vs. Mathan Model Co-operative Credit & Service Society Ltd. reported in (2008) 299 ITR 70*

**5.** The Ld.AR further submitted that the assessee had explained the reasons for filing the return as well as the audit report beyond the prescribed time and contended that the issue to be decided is whether penalty can be imposed u/s. 271B of the act when there is a technical breach in filing the audit report. The Ld.AR also relied on the various orders cited before the Ld.CIT(A) in support of his arguments and prayed to allow the appeal.

The Ld.DR relied on the orders of the lower authorities and prayed to dismiss the appeal.

**6.** We have heard the arguments of both the sides and perused the records.

**7.** It is the contention of the assessee right from the beginning that the delay has not been occurred voluntarily and the reply filed before the AO clearly explained the reasons for the delay in filing the audit report which is as follows:

*“..... We are co-operative society engaged in the business of providing agricultural credit and banking services to members. We are regular in filing income tax returns and audit report in time. Since ours is a co-operative society, we have to abide by the rules framed under the societies act. As per the said act. the auditors have to be appointed by the Registrar of societies. In our case auditors were appointed by the registrar so late in relating to financial year 201617. That was the reason why we cannot able to file audit report in time. The reason for delay was beyond our control.....”*

**8.** As seen from the reply filed by the assessee, the assessee had fully explained the reasons for the delay in filing the audit report. We have also perused the assessment record and found that the AO had not made any addition to the returned income and also the audit report along with the return of income was filed well before the AO had passed the assessment order on 25/12/2019. Therefore the delay has been properly explained and there is a valid reason for not filing the audit report in time. In view of the fact that the AO had not made any additions to the returned income and also by considering the fact that the audit report was filed well before the assessment order was passed by the AO u/s. 143(3) of the Act, we have no hesitation in deleting the penalty levied u/s. 271B of the Act.

**9.** Further in similar circumstances, the Coordinate Bench of this Tribunal in case of Udapi Narayana Rao Padmanabh Rao vs. ACIT in ITA No. 136/Bang/2023 vide order dated 20.04.2023 held that

*“we are of the considered view that when the tax audit report was made available to the AO before completion of assessment proceedings, then for venial technological breach without any malafide intention, penalty cannot be levied u/s 271B of the Act.”*

In view of the above said order of the Coordinated Bench of this Tribunal, we are also setting aside the penalty imposed u/s. 271B of the Act.

**10.** In view of the disposal of the main appeal, the stay petition filed by the assessee become infructuous and dismissed.

**11.** In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 18<sup>th</sup> September, 2024.

Sd/-  
(WASEEM AHMED)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 18<sup>th</sup> September, 2024.  
/MS /

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)              |

By order

Assistant Registrar,  
ITAT, Bangalore