

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1637/Chny/2024
निर्धारणवर्ष/Assessment Year: 2017-18

S 1081 Kasthuripatty – Primary Agricultural Co-op. Credit Society Ltd., 1/3 75F, , Sankari, Salem-637 302.	v.	The ITO, Ward-1(6), Salem.
[PAN: AAEAS 7543 K]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.S. Sridhar, Advocate (Erode)
प्रत्यर्थी की ओर से /Respondent by	:	Mr.P. Krishna Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	12.09.2024
घोषणाकीतारीख /Date of Pronouncement	:	20.11.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) wherein the assessee is challenging the action of the Ld.CIT(A) confirming the penalty levied u/s.271B of the Income Tax Act, 1961 (hereinafter in short "the Act").

2. The Ld. Counsel for the assessee submitted that there is a delay of '17' days in filing of this appeal. And since, the Ld.AR brought to our notice that the impugned order was misplaced and therefore, there was



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delay in filing of this appeal. Since, the assessee can't be faulted for the omission on the part of the Ld.AR, we are of the opinion that assessee should not be penalized and therefore, we condone the delay of '17' days and proceed to adjudicate the appeal on merits.

3. The brief facts are that the assessee is a Co-operative Society providing credit facility to its members. The assessee filed its Return of income (RoI) on 31.03.2018 declaring 'NIL' income. Later, the assessee's case was selected for limited scrutiny under CASS. The AO had framed the assessment u/s.143(3) of the Act on 07.12.2019 and computed the total income at Rs.36,08,473/-. Thereafter, the AO has initiated the penalty u/s.271B of the Act for not filing the Audited Report u/s.44AB of the Act along with the RoI within the time allowed u/s.139(1) of the Act and the AO levied penalty of Rs.1.50 lakhs by order dated 01.02.2022.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who was pleased to dismiss the same.

5. Aggrieved, the assessee is in appeal before this Tribunal.

6. We have heard both the parties and perused the material available on record. The aforesaid facts are not disputed. Therefore, the aforesaid facts are not repeated for the sake of brevity. And the Ld.AR admitted the delay in getting its accounts audited. However, it was pointed out



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that the audit report u/s.44AB of the Act was furnished along with the RoI before completion of the assessment. It was also pointed out that the statutory audit by the Co-operative Department of Tamil Nadu Government was completed only on 12.08.2017 which report was received by assessee only in January, 2018 and immediately thereafter, the assessee had filed the same before the AO and notice u/s.143(2) was issued only after that date i.e. on 14.08.2018 and thereafter, the assessment was completed only on 07.12.2019; and thus, it is noted that the audit report of assessee was furnished before the AO, while the assessment was framed by the AO. Therefore, it can be presumed that the AO had taken note of the audit report before completing the assessment in year 2019. According to the Ld.AR, since the statutory audit of the assessee has been carried out belatedly by the Audit Team of the Tamilnadu Co-operative Department and the assessee had no control over them, the delay occurred; and it is brought to our notice that the delay in filing the Audit Report before the AO/Department was due to the belated receipt of Statutory Audit Report, which was a bona fide reason for cause of delay and thus there was no deliberate action on the part of the assessee not to file the audit-report before the due date. Therefore, according to the Ld.AR, there was reasonable cause for non-filing of the Audit Report along with RoI, which contention could not be controverted by Revenue. Considering the facts stated above, we agree that



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assessee's omission to file Audit Report within due date can't be termed as deliberate and the violation is venial technical breach, for which penalty need not be levied. For that, we rely on the decision of this Tribunal in the case of Balaji Logistics v. ACIT in ITA No.2248/Chny/2019 dated 07.09.202 wherein, this Tribunal on identical facts deleted the penalty by observing as under:

"6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. It is an admitted fact that although the assessee has filed Tax Audit Report in Form 3CB as required u/s.44AB of the Act, beyond due date specified u/s.139(1) of the Act, but such Tax Audit Report was made available to the AO before completion of assessment proceedings u/s.143(3) of the Act, on 22.11.2017. It is evident from the fact that the assessee has obtained Tax Audit Report from an Accountant on 28.03.2016 and furnished before the AO during the course of assessment proceedings. Therefore, 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 technical breach without any mala fide intention, penalty cannot be levied u/s.271B of the Act. Further, a similar issue has been considered by the co-ordinate Bench of the Tribunal in the case of M/s. T P D 101 Uthangarai Milk Producers Co-operative Society Ltd.(supra), where on identical set of facts, penalty levied u/s.271B of the Act, has been deleted. The relevant findings of the Tribunal are as under:

"...7. We have heard both the parties and perused the materials available on record and gone through the orders of the authorities below. The assessee supposed to have been filed audit report as required u/s.44AB of the Act, on or before 31.10.2015. However, such audit report has been filed on 05.03.2016, which is before the date of completion of assessment proceedings u/s.143(3) of the Act. In other words, although the assessee has filed tax audit report beyond the stipulated period, but such tax audit report was made available to the AO before he completes assessment proceedings. The assessee has given reasons for delay in filing tax audit report. As per which, the audit of accounts of society done by the Dept. of Cooperative Audit, could not be completed on or before 31.10.2015 and said delay was not in the hands of the assessee. Therefore, there is a reasonable cause for not filing the tax audit report within prescribed time limit and thus, penalty cannot be levied. We find merits in the submission of the assessee for the simple reason that non-filing of audit report within the due date is a venial technical breach without any mala fide intention on the part of the assessee. Because, completion of audit of books of accounts of the society is under the control of Dept. of Cooperative Audit and thus, unless the Dept. of Cooperative Audit completes audit, the assessee cannot file return of income along with tax audit report. Therefore, we are of the considered view that reasons given by the assessee for not filing tax audit report prescribed u/s.44AB of the Act, is neither intention nor any mala fide intention, but it is venial



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technical breach and for this reason, penalty u/s.271B of the Act, cannot be levied. This principle is supported by the decision of the Hon'ble jurisdictional High Court in the case of P.Senthil Kumar v. PCIT reported in 416 ITR 336, where an identical issue had been considered by the Court and held that for venial technical breach without any mala fide intention, penalty cannot be levied. The ITAT Cochin Bench in ITA No.411/Cochin/2018 vide order dated 05.02.2019 had held that once audit report has been made available before the AO, when the assessment proceedings were completed, then, there is no reason for levy of penalty.

8. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that reasons given by the assessee for not filing tax audit report within due date comes under reasonable cause as provided u/s.271B of the Act, and thus, the AO is erred in levying penalty u/s.271B of the Act. Hence, we direct the AO to delete penalty levied u/s.271B of Act."....

7. In this view of the matter and by following the decision of the coordinate Bench of the Tribunal in the case of M/s.T P D 101 Uthangarai Milk Producers Co-operative Society Ltd.(supra), we direct the AO to delete penalty levied u/s.271B of the Act.

8. In the result, the appeal filed by the assessee is allowed.

7. Respectfully following the above decision of the Coordinate Bench of the Tribunal in the case of Balaji Logistics v. ACIT (supra) for the assessment year 2015-16, we are of the considered opinion that it is not a fit case for the levy of penalty under section 271B of the Act and accordingly, the penalty levied stands deleted.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 20th day of November, 2024, in Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 20th November, 2024.

TLN, Sr.PS



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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF