

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

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

ITA No. 230/Coch/2024

Assessment Year : 2015-16

The Income Tax Officer, Ward – 1, Kalpetta, Wayanad. Kerala.	Vs.	M/s. The Kaniyambetta Service Co-operative Bank Ltd., Reg No. F 1860 Kaniyambetta Service Co- operative Bank, Kaniyambetta, Wayanad – 673 122. Kerala. PAN: AADAT0778L
APPELLANT		RESPONDENT

Assessee by	:	Ms. Binisha Baby, Advocate
Revenue by	:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing	:	01-10-2024
Date of Pronouncement	:	17-12-2024

ORDER

PER BENCH

This is an appeal filed by the Revenue challenging the order of the NFAC, Delhi dated 15/01/2024 in respect of the A.Y. 2015-16 in which the penalty u/s. 271E of the Act has been modified.

2. The brief facts of the case are that the assessee is a primary agricultural credit society and during the year, the assessee had paid the loans to the members and also accepted deposits by cash. The AO alleged

that the amount given and received exceeds Rs. 20,000/- which is violation of section 269SS of the Act and therefore penalty proceedings u/s 271E of the Act were made on the assessee. As against the said penalty order, the assessee filed an appeal before the Ld.CIT(A) and contended that the assessee had dealt with the members only who are all agriculturists and illiterate people and therefore the payment of loan amount and also the acceptance of the deposit amount by cheque or DD or through electronic mode was not possible and all the payments made and received were properly entered into the books of the account of the members and therefore there is no doubt about the genuiness and identity of the persons and therefore prayed to delete the penalty. The Ld.CIT(A) also considered the issue in detail and considered the fact that the assessee has dealt with the members only and also the fact that the assessee is a co-operative society had granted a partial relief of 10%. The said order of the Ld.CIT(A) is challenged before this Tribunal by the revenue with the following grounds:

“The order of the CIT(A) is erroneous in granting a relief of 10% of the total penalty levied U/s 271E. CIT(A) has failed to justify with reasons the existence of reasonable cause falling within the provisions of Sec.273B. The order of the CIT(A) granting relief of 10% of penalty u/s 271E is not justified, when CIT(A) in Para 12 has confirmed that this is a fit case for levy of penalty. The relief awarded by the CIT(A) is contradictory to the finding in the order that there are no details regarding the name, PAN and address of the depositors/lenders to be considered as a reasonable cause or as compelling circumstances u/s 273B. Decision of Kerala High Court in NSS Karayogam Vs CIT (2020) 116 Taxmann.com 141(Kerala) is squarely applicable to the case. CIT (A) specifically mentions that despite the case being posted on specified dates, none of the reasons cited were fully addressed by the assessee.

Without bringing out any compelling circumstances provided under section 273B , the order of the CIT(A) in granting relief of 10% of the penalty levied under section 271E is not justified , when the CIT(A) in Para 12 has himself confirmed that this is a fit case for levy of penalty u/s. 271E of income tax Act and the assessee has also failed to prove that there was reasonable cause for this violation .

1. The relief awarded by the CIT (A) is contradictory to the finding in the order that there are no details regarding the name, PAN and address of the depositors/lenders to be considered as a reasonable cause or as compelling circumstances provided under section 273B for granting a relief of 10% of the penalty levied U/s 271E.

2. The Hon'ble CIT(A) has not considered the fact that the decision of the Hon'ble jurisdictional High Court in NSS Karayogam Vs CIT (2020) 116 Taxmann.com 141(Kerala) is squarely applicable to the case and hence the penalty ought to have been upheld in its entirety .

3. The order of the CIT (A) specifically mentions that both during the scrutiny and appeal proceedings despite the case being posted on specified dates ,none of the reasons cited were fully addressed by the assessee and despite posting the case several times during scrutiny, no data was produced by the assessee. Hence the relief granted is not justified.”

3. At the time of hearing, the Ld.DR submitted that having accepted by the ld CIT(A) that the assessee is liable to be imposed a penalty, granting a relief of 10% is not correct.

4. On the other hand, the Ld.AR submitted that the assessee is a co-operative society and also dealt only with the members and the members being agriculturists and also does not have any knowledge about the banking transactions, the said amounts were received and paid by way of cash and therefore instead of allowing the entire amount, the Ld.CIT(A) had granted a small relief of 10% which is in order.

5. We have heard the arguments of both sides and perused the materials available on record.

6. The facts involved in this appeal is admitted by both sides and the only dispute is with regard to deletion of penalty at 10% of the amount by the Ld.CIT(A). We consider the facts that the assessee is a co-operative society and also they offered loans to its members and received deposits by

cash since the members are agriculturists and the incomes they derived out of the agricultural activities would be only by way of cash. Further it is not the case of the Revenue that the assessee had dealt with non members whose identity could not be verifiable. Further all the details of the members are available and the disbursement of loan details are available in the books of accounts which were audited by the statutory auditors and therefore the penalty imposed equivalent to taxes itself is not required on the facts and circumstances of the case but the Id CIT had granted a small relief which in our opinion is a reasonable one.

7. The order of the Coordinate Bench of this Tribunal in the case of The SulthanBathery Service Co-operative Bank Ltd. vs. JCIT in ITA Nos. 319 & 320/Coch/2023 dated 14.08.2024 relied on by the Id DR is on different facts since the KYC norms were not collected by the assessee in the said case but in this case, the assessee has dealt with only members and their details are available with the assessee and therefore the said order would not be applicable to the facts of the present case.

8. In the circumstances, we are of the view that the penalty relief granted by the Ld.CIT(A) at 10% is a reasonable one and hence the appeal filed by the revenue is dismissed.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 17th December, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 17th December, 2024.
/MS /

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

By order

Assistant Registrar,
ITAT, Cochin