

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

BEFORE SHRI INTURI RAMA RAO, AM

**ITA No. 494/Coch/2024
Assessment Year: 2018-19**

Vegetable & Fruit Promotion Council
Keralam (VFPCK)
Mythri Bhavan, Near Doordarshan Kendra
Kakkanad, Cochi 682037
[PAN: AAATV6575D]

..... Appellant

Vs.

Asst. Commissioner of Income Tax
Ernakulam

..... Respondent

Appellant by: Shri R. Ramachandran, CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 09.12.2024
Date of Pronouncement: 09.12.2024

ORDER

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 04.03.2024 for Assessment Year (AY) 2018-19.

2. Brief facts of the case are that the assessee is a company duly incorporated under the provisions of section 8 of the Companies Act, 2013. It is duly granted registration under the provisions of section 12AA of the Income Tax Act, 1961 (the Act) . The assessee company was formed by the Government of Kerala for the relief of poor, small and marginal farmers.

Assessment for AY 2018-19 was completed u/s. 143(3) of the Act vide order dated 13.04.2021 at a loss of Rs.76,64,643/-. During the course of assessment proceedings, the AO found that the assessee had not got the books of account audited as stipulated u/s. 44AB of the Act and failed to file the prescribed audit report on or before the specified date. Therefore, he initiated penalty proceedings u/s. 274 r.w.s. 271B of the Act. In response to the show cause notice no explanation was filed by the assessee. In the circumstance the AO had proceeded with levy of penalty u/s. 271B of the Act vide order dated 28.12.2021 levying penalty of Rs.1,50,000/- u/s. 271B of the Act.\

3. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the levy of penalty for non prosecution without adverting to the statements of facts of the case.

4. Being aggrieved, the assessee is in appeal before the Tribunal.

5. The learned counsel for the assessee submits that the provisions of section 44AB of the Act have no application to the assessee, inasmuch as, the assessee was not carrying on any business. Therefore, he prayed that the penalty order be quashed.

6. On the other hand, the learned Sr. DR, supporting the orders of the lower authorities, submits that no interference is called for.

7. I have heard the rival contentions of both the parties and perused the material available on record. The solitary issue in the present appeal relates to whether the levy of penalty u/s. 271B of the Act is justified in the facts of the

present case. Admittedly, the assessee is a company registered u/s. 8 of the Companies Act, 2013 enjoying registration under the provisions of section 12AA of the Act. Therefore, it cannot be said that the assessee company is carrying on any business and the turnover exceeded above Rs. 1 crore. Therefore, the provisions of section 44AB of the Act have no application to the facts of the present case. The lower authorities, without properly appreciating the facts of the case as well as spirit of provisions of section 44AB of the Act, had merely levied penalty which is contrary to the plain provisions of section 44AB of the Act. Therefore, I direct the AO to delete the penalty of Rs. 1,50,000/- levied u/s. 271B of the Act.

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

Order pronounced in the open court on 9th December, 2024

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 9th December, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

Assistant Registrar
ITAT, Cochin