



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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.37/CTK/2025
Assessment Year : 2019-20

Rourkela Wholesale Consumer Cooperative Sstores Limited., Nanda Bhawan, Main Road, Bisra Road,, Rourkela	Vs.	Income Tax Officer, Ward-1, Rourkela
PAN/GIR No.AAAAR 0626A		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Sarangi, CA
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 29/01/2025
Date of Pronouncement : 029/01/2025

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 21.11.2024 in Appeal No.NFAC/2018-19/10380281 for the assessment year 2019-20 confirming the penalty levied u/s.270A of the Act.

2. Shri S.K.Sarangji, Id AR appeared for the assessee and Shri S.C.Mohanty, Sr. DR appeared for the revenue.

3. The assessee has taken following grounds of appeal:

"1. For that order u/s.250 of the I.T.Act dated 21.11.2024 as passed by the Id CIT(A), NFAC is illegal and arbitrary on the facts in the circumstances of the case.

2. For that the penalty of Rs.4,46,715/- imposed u/s.270A of the I.T.Act is illegal without jurisdiction on the facts and in the circumstances of the case."

4. Brief facts of the case are that the assessee is a Co-operative Society and has not filed the return of income 139(1 of the Act. The Assessing Officer had the information that the assessee had made cash deposit in the bank accounts with State Bank of India and HDFC Bank, therefore, after following due procedure of section 148A of the Act, notice u/s.148 of the act was issued. In response to which, the return of income was filed declaring total income at Rs.28,73,560/-. Thereafter assessment was completed u/s.143(3)/147 r.w.s 144B of the Act, wherein, the income declared by the assessee was accepted and penalty proceedings u/s.270A of the Act were initiated for under reporting of income. Subsequently, vide the impugned order dated 9.5.2024, the Assessing Officer has levied the penalty of Rs.4,46,715/- y/s.270A of the Act for under reporting of income being 50% of the amount of tax payable on under reported income. For levying the penalty, the Assessing Officer has resorted to apply the

provisions of 270A(2)b) of the Act, whereby, it has been provided that where the assessee has not filed the return of income and for the first time, the assessee has filed income u/s.148 of the Act, the income returned be treated as the amount of under reported income.

5. In the first appeal, the Id CIT(A) confirmed the levy of penalty. Hence, the present appeal is before us.

6. During the course of hearing, Id AR submits that the assessee is a Co-operative Society and its accounts are subject to audit by the auditors appointed by the Directorate of Cooperative Audit, who vide order dated 29.11.2021 has appointed the auditors to get the accounts audited for five financial years starting from 2016-17 to 2019-20, which include the year under appeal also. Being the assessment year under appeal i.e. 2019-20, the due date for filing of return of income u/s.139(1) of the Act was upto 30.9.2019 and since the accounts were not get audited and only after appointment of auditor by the Directorate of Audit, Odisha, Bhubaneswar on 29.11.2021, the same are audited, thus the assessee could not be able to file the return u/s.139(1) of the Act. Ld AR submits that the circumstances as explained are beyond the control of the assessee and there is reasonable cause for not filing the return of income in time, therefore, in view of the provisions of sub-section (6)(a) of Section 270A of the Act, there is bonafide explanation and the assessee has been able to

substantiate its claim and therefore, levy of penalty may directed to be deleted.

7. On the other hand, Id Sr DR vehemently supported the orders of lower authorities and further submitted that the assessee has not filed the return of income u/s.139(1) of the Act, therefore, the AO has rightly levied the penalty u/s.270A of the Act for under reporting the income. He further submitted that if notice u/s.148 of the act was not issued, there is every possibility that no return was filed and due taxes were not paid. Therefore, he prayed for confirmation of levy of penalty.

8. We have considered the rival submissions and perused the record of the case. From the perusal of the orders of Directorate of Cooperative Audit, Odisha, Bhubaneswar dated 29.11.2021, it is seen that for the year under appeal, i.e. F.Y. 2018-19 relevant to A.Y. 2019-20, the Directorate of Cooperative Audit vide letter dated 29.11.2021 has appointed the auditors namely M/s. N. Pradhan and Associates, C.A. to get the accounts audited. The letter dated 29.11.2021 of is reproduced as under:

Order No. 6845 VI (9) 2021 - Audit-6 Date: 29/11/2021

In exercise of powers conferred on me under Section 62 of the OCS Act 1962,
I Sri Bharat Chandra Behera, OAS (SS) Auditor General of Cooperative Societies, Odisha,
Bhubaneswar do hereby authorise M/s. N. Pradhan & Associates (Beating St. No. 21)
9 The Entrepreneurial Law Centre Chartered Accountants to conduct the Final
audit of accounts of the Rourkela Wholesale Consumers' Cooperative Society Ltd
Rourkela for the year from 01-4-2016 to 31-3-2017 to 01-4-2018 to 31-3-2019 to 01-4-2020 to 31-3-2021 (03 yrs), i.e., for the period
from 01-4-2016 to 31-3-2017 to 01-4-2018 to 31-3-2019 to 01-4-2020 to 31-3-2021 on the following terms & conditions:

1. They shall conduct cent percent checking of Receipts and Vouchers relating to both Cash and Non cash transactions, Subsidiary Registers, General Ledger, Balance Register and such other relevant records, documents, Books of Accounts of the Society as prescribed.
2. They shall conduct the audit and prepare the Audit Report basing on the AGCS, Odisha Circular letter No-5342 (16) dt-28.09.2013 (Format for preparation of Audit Report of Cooperative Societies undertaking credit business (other than PACS) and circular letter No-4268 dt-18.07.2011 (format for preparation of Audit Report of priority societies like RCMS, Wholesale Consumer Coop Stores, Weaver Coop Societies and House Building Coop Societies), whichever is applicable to the concerned society.
3. They shall prepare the Audit Report covering both Management & Financial Audit.
4. They shall conduct the audit according to the OCS Act, Rules and Byelaws and shall include:
 - a) A verification of balance of the Credit
 - b) A verification of Cash Balances and Securities, Depositors or Creditors and of the amount due from the Debtors of the Society.
 - c) An examination of overdue debts, if any.
 - d) A valuation of the Assets & Liabilities of the Society.
 - e) An examination of all transactions of the Society.
 - f) An examination of the Statement of Accounts including the Receipt & Expenditure Statement, Trial balance, Manufacturing Account, Trading Account, Profit & Loss Account, Balance Sheet along with the Statement of Net Profit available for distribution in accordance with the OCS Act, Rules & Byelaws of the Society for the year to be prepared and other Statements in connection with Audit to prepare in the prescribed Proforma.
 - g) Classification of audit be made in accordance with the Circular No. 26137-VI (I) 37/93/ Audit-8/20.12.1993.
 - h) The Auditor should see that all the accounts are reconciled as on the date of Balance Sheet. Audit Report with unreconciled accounts shall not be accepted.
 - i) A "Note of Account" be prepared by the Auditor along with the Audit Report on the following points, if any:
 - i. Any transaction which appears to the Auditor to be contrary to Law and to the Rules or Byelaws of the Society.?
 - ii. Any sum which ought to have been put has not been brought into the Account.
 - iii. Any transaction which appears to him to require further investigation.

3

trust, wilful negligence or misappropriation or fraudulent retention of any money or property by any person. A special report should be submitted on this during the course of Audit and also with the Audit report for initiating Surcharge action.

v. Any Asset which appears to be bad.

vi. Whether or not the Auditor has obtained all information and explanation which be required.

vii. Whether or not such Financial Statements exhibits a true and correct account on the state of the Societies affairs according to the best of his information and the explanation given to him as given in the Books of the Society.

viii. Any other matter as directed by the AGCS, Orissa.

5. A brief note made as "Highlights on Audit Findings;" in pursuance of Circular No. 7411 dated 06.09.2000 is to be given on the first page of the Audit Report, i.e., right after the "Contents".

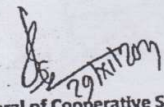
6. The Auditor shall submit a Verification Certificate in accordance with the Circular No. 7535 dated 13.09.2000 along with the Audit Report.

7. The Audit should be commenced within 07 (Seven) days from the date of receipt of the Authorisation Order and completed by November-15 (Fifteen) working months for each year positively and the Audit Report be submitted in complete form in 6 (Six) copies to the Assistant AGCS, Sambalpur, Audit Circle for issue of Audit Certificate. No extension of time is allowed without prior approval of the undersigned.

8. The Society shall pay Audit Fees @ Rs 300/- per day per Auditor as fixed by Government vide Order No. 5015 dated 07.06.2017 of the Principal Secretary to Govt. of Odisha, Cooperation Department, out of which 95% of the total Audit Fees will be paid as Audit Cost to M/S N. Pradhan & Associates, Chartered Accountant inclusive of all expenses after issue of Audit Certificate on the said Audit Report and the balance 5% to be deposited in the local Government Treasury under the Head of Account "0425-COOPERATION-101-AUDIT FEES-0010-CHARGES FOR SERVICE PROVIDED-02022-COLLECTION OF PAYMENT FOR SERVICE RENDERED" vide Order No-5006 dt-07.06.2017 of the Principal Secretary to Govt. of Odisha, Cooperation Department. No extra remuneration like reimbursement of conveyance expenses, lodging expenses, Service Tax etc. will be paid to concerned chartered accountants firms for the said purpose and no advance should also be paid to the C.A. Firms as per the aforesaid Order No. 5015/dt. 07.06.2017.

9. The Society shall place before the Auditor the Statement of Receipts & Charges, Manufacturing Account, Trading Account, Profit & Loss Account, Balance Sheet, reconciliation Statement & other Financial Statements along with Books of Accounts, relevant records & documents and such other information as required during Audit.

10. The undersigned reserves the Right for cancellation of the Order in case of any deviation from the above points.


Auditor General of Cooperative Societies
Odisha, Bhubaneswar

Memo No: 0870 Date: 2/11/21
Copy forwarded to M/s N. Pradhan & Associates Chartered Accountants
SBS Market Complex, 2nd floor, Udit Nagar, Roorkela - 269012, Sundergarh
Mail id: nekunja-123@rediffmail.com for
information and necessary action. They should commence the audit of accounts of the Society for
the year 2016-17/2018-19 & 2020-21 (03 yrs) within 07(Seven) days from the
date of receipt of the Order and submit the Commencement Report to the undersigned by return of
post.
They shall use Red pencil for checking the accounts of the Society in course of audit.
Necessary clarifications regarding drafting of Audit Report, preparation of Financial Statements as
prescribed can be obtained from O/o the Assistant AGCS, Sundergarh Audit Circle,
Sundergarh. They should also obtain and enclosed the Annual Verification Reports relating to
Cash, Stock and Bills and other documents etc. from the concerned Society.
They are also requested to submit M.P.R. on their performance of audit to the Assistant
AGCS, Sundergarh Audit Circle, Sundergarh in every month for review of Audit
Progress and attend their Review Meeting positively.

Memo No: 6847
Copy to the Secretary Roorkela Wholesale Consumers' Co-op. Stores
Nanda Bhanan, Main Road, Roorkela - 269001
Mail id: sswcs12345@gmail.com for information and
necessary action with a request to make ready all the books and records alongwith the financial
statements for said years for audit purpose. Further, he is requested to render all possible help and
assistance to the Auditor as and when needed for conducting and timely completion of Audit.

Memo No: 6848
Copy to the Assistant AGCS, Sundergarh Audit Circle, Sundergarh DRCS,
Sundergarh Division, Sundergarh for information and necessary action.

[Signatures and Dates: 29/11/2021]
Joint Auditor General of
Cooperative Societies (O)
Date: 29/11/2021
Joint Auditor General of
Cooperative Societies (O)
Date: 29/11/2021
Joint Auditor General of
Cooperative Societies (O)
Date: 29/11/2021

Therefore, it is not possible on the part of the assessee to file the audited books of account within the statutory time limit u/s.139(1), which expires on 30.9.2019. This constitutes reasonable explanation and bonafide on the part of the assessee, where the assessee has been able to substantiate its explanation with plausible evidence such as the letter of appointment of auditors by the Directorate of Cooperative Audit. In our opinion, it is a bonafide explanation and the circumstances were beyond the control of the assessee, therefore, in view of the provisions of section 270A(6)(a) of the Act, the penalty levied is hereby deleted by treating the explanation of the assessee as bonafide.

9. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 29/01/2025.

Sd/-

(George Mathan)
JUDICIAL MEMBER

sd/-

(Manish Agarwal)
ACCOUNTANT MEMBER

Cuttack; Dated 29/01/2025
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Rourkela Wholesale Consumer Cooperative Sstores Limited., Nanda Bhawan, Main Road, Bisra Road,, Rourkela
 2. The respondent: Income Tax Officer, Ward-1, Rourkela
 3. The CIT(A)- NFAC, Delhi
 4. Pr.CIT, Sambalpur
 5. DR, ITAT,
 6. Guard file.
- //True Copy//

By order

Sr.Pvt.Secretary
ITAT, CUTTACK

