

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH****BEFORE SHRI INTURI RAMA RAO, AM  
AND SONJOY SARMA, JM****ITA No.118 & 119/Coch/2025  
Assessment Years: 2013-14 and 2015-16**

Kullumala Agricultural Cooperative Bank Ltd ..... Appellant  
No. HW 14, Cooperative Bank Ltd No.14,  
Kallumala, Pokallumala, Mavelikara,  
Alappuzha-690110.  
PAN: AAMFK3924F

vs.

Income Tax Officer ..... Respondent  
Ward-2,  
Thiruvalla.

Appellant by: Shri Sabu C S, CA  
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 02.06.2025  
Date of Pronouncement: 30.06.2025

**ORDER****Per: Inturi Rama Rao, AM**

These are two different appeals filed by the assessee directed against the different orders of the National Faceless Appeal Centre, Delhi confirming the levy of penalty U/s. 271B for the AY 2013-14 and 2015-16.

2. Since the identical facts and issues are involved in these two appeals, these were heard together and disposed of vide this common order.

3. For the sake of clarity and convenience, the facts involved in ITA No. 118/Coch/2025, AY 2013-14 are stated herein under.

4. Briefly the facts of the case are that the appellant is a Cooperative Society duly registered under the Kerala Cooperative Societies Act. It is classified as Primary Agricultural Credit Society. The appellant has not filed the return of income U/s. 139(1) of the Act for the AY 2013-14. The AO based on the information that the appellant Cooperative Society had made cash deposits aggregating to Rs. 62,50,000/- in the Savings Bank Account held with District Cooperative Bank, Alappuzha, Kerala formed an opinion that the income escaped assessment from tax. Accordingly, a notice U/s. 148 of the Income Tax Act, 1961 (in short "the Act") was issued on 27/03/2021. The assessment proceedings were completed vide order dated 29/03/2022 passed U/s. 147 r.w.s 144 & 144B of the Act at a total income of Rs. 58,62,221/-. While the matter stood thus, the AO also issued a show cause notice U/s. 275 r.w.s 271B of the Act on 29/03/2022 calling upon the appellant to show cause as to why an order imposing penalty U/s. 271B of the Act cannot be passed. In response to the show cause notice, the appellant has filed a detailed explanation which is extracted in the order passed by the AO. The substance of the explanation is that the assessment order was appealed before the National Faceless Appeal Centre. Further, the AO made assessment disallowing the claim for deduction U/s. 80P of the Act for only non-filing of the income. It was further submitted that to keep the penalty proceedings in abeyance till the disposal of the appeal. However, the AO had

proceeded with levy of penalty by holding that the assessment proceedings and the penalty proceedings U/s. 271B of the Act are two different things and the penalty proceedings are independent of the assessment proceedings. Since the appellant had failed to get the accounts audited, the AO was of the opinion that the penalty is levyable U/s. 271B of the Act and accordingly, levied the penalty of Rs. 1,50,000/- vide the order dated 15/09/2022 passed U/s. 271B of the Act.

5. Being aggrieved by the above levy of penalty, an appeal was filed before the CIT(A) contending that the appellant is under misconception that the Cooperative Societies are not subject to audit U/s. 44AB of the Act and therefore, the penalty cannot be levied. However, the CIT(A) confirmed the action of the AO for non-prosecution without entering into the merits on the levy of penalty.

6. Being aggrieved, the appellant is in appeal before us in the present appeal.

7. At the outset, there is a delay of 174 days in filing the present appeal before this Tribunal. The appellant has filed a petition seeking condonation of delay by stating that the delay had occurred on account of the ignorance of the Income Tax Appellate Proceedings and hence, the matters were entrusted to a firm of Chartered Accountants and the appellant had not received the order passed by the NFAC either through email or physical service. Further, it was submitted that the Authorized Representative, who had given access to the Income Tax portal could not notice this appellate order. Thus, it is pleaded

that the delay is neither intentional nor deliberate and therefore, the delay may be condoned.

8. We heard the rival submissions and perused the material available on record. The appellant had categorically states that the appellant had not received the order passed by the CIT(A) confirming the penalty levied U/s. 271B of the Act. This argument remained uncontroverted by the Ld. Sr. DR. In these circumstances, we are of the view that it cannot be said that there is a delay in filing the appeal, as per the purpose of computing the period of limitation the date of the knowledge of order had to be reckoned. Consequently the question of condonation does not arise. Therefore, we proceed to dispose of the appeal on merits.

9. At the outset, we find that the CIT(A) had dismissed the appeal ex-parte without entering into the merits of levy of penalty. The appellant Cooperative society challenged the very levy of penalty U/s. 271B of the Act on a reasonable cause that it is under the bona fide belief that it is not subject to audit U/s.44AB of the Act. The CIT(A) without discussing the facts and the Grounds of Appeal raised, merely confirmed the action of the AO and thus, the order passed by the NFAC is not in accordance with the provisions of section 250(6) of the Act.

10. As contemplated u/s. 250(6) of the Act the CIT(A) is required to frame points of determination followed by a detailed discussion thereupon before passing the order. It is the settled position of law that the CIT(A), even while disposing of the appeal ex-parte, is duty bound to dispose of the appeal on

merits. Reliance in this regard can be placed on the decision of the Hon'ble Bombay High Court in the case of PCIT vs. Premkumar Arjundas Luthra 279 CTR 614. Therefore, in the light of the above legal position we are of the considered view that the matter requires to be remanded to the file of the CIT(A) with a direction to dispose of the appeal de novo on merits after affording reasonable opportunity of hearing to the assessee.

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

12. With respect to the appeal in ITA No. 119/Coch/2025, AY 2015-16, since the identical facts and issues are involved in the assessee's two appeal for the AY 2013-14 and 2015-16, our decision in appeal for the AY 2013-14 shall applies mutatis mutandis for the AY 2015-16 also.

13. In the result, appeal filed by the assessee is partly allowed.

14. Ex-consequenti, both the appeal filed by the assessee are partly allowed.

Order pronounced in the open court on 30<sup>th</sup> June, 2025.

Sd/-

**(SONJOY SARMA)**  
**JUDICIAL MEMBER**

Sd/-

**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Cochin, Dated: 30<sup>th</sup> June, 2025

*okk sps*

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