

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND  
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:2069/Chny/2025

निर्धारण वर्ष / **Assessment Year: 2022-23**

<b>Commissioner of Police Coimbatore City Tamilnadu Police Canteen, 698, PRS Campus, Dr. Balasundaram Road, PN Palayam, Coimbatore – 641 018.</b>	vs.	<b>ITO, NC Ward 1(1), Coimbatore.</b>
<b>[PAN:AAAGC-0195-F ] (अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

अपीलार्थी की ओर से/Appellant by : Shri. V. Swaminathan, C.A.

प्रत्यर्थी की ओर से/Respondent by : Ms. Anitha, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 17.09.2025

घोषणा की तारीख/Date of Pronouncement : 16.10.2025

**आदेश / O R D E R**

**PER S. R. RAGHUNATHA, AM :**

This appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2022-23, vide order dated 27.05.2025.

2. The solitary ground raised by the assessee in its appeal is that the action of the Id.CIT(A) is erroneous in confirming the penalty levied by the AO u/s.271B of the Act for failing to furnish the Tax audit report u/s.44AB of the Act, when the assessee has carried out the transactions on the concept of principles of mutuality.

3. The brief facts of the case emanating from the records are that the assessee is Unit set up under government of Tamil Nadu home department to cater so the requirement of police personnel of household items such as groceries. The assessee procures household items from various suppliers and distributes to 9 unit canteens which serve the requirements of police personnel. The assessee is established to serve them without any profit motive and established on the principles of mutuality. The assessee filed its return of income for the Assessment Year 2022-23 on 22.12.2022 by declaring nil income. The Assessee's case was selected for scrutiny for the reason that 'it has shown substantially lower turnover in income tax return in comparison to turnover shown in GST returns filed and also has reported huge turnover exceeding statutory limit for tax audit as per section 44 AB of the Act and tax audit report has not been filed.

4. During the assessment proceedings, the assessee filed the details called for from time to time before the assessing officer and concluded the assessment u/s.143(3) of the Act dated 20.03.2024 by accepting the return of income filed by the assessee under the concept of principles of mutuality. However, the

assessing officer initiated separate penalty proceedings u/s.271B of the Act for non-filing of tax audit report u/s.44AB of the Act.

5. Subsequently the Assessing Officer (AO) issued notice u/s.274 r.w.s.271B of the Act for levy of penalty for failing to furnish the tax audit report as required u/s.44AB of the Act. The AO found that the assessee had transacted a turnover to the tune of Rs.32,33,16,631/- during the impugned assessment year but not filed the tax audit report u/s.44AB of the Act along with the return of income filed. Hence, the AO levied penalty of Rs.1,50,000/- u/s.271B of the Act by passing an order dated 23.09.2024.

6. Aggrieved by the penalty order of the AO, the assessee preferred an appeal before the Id.CIT(A) and the same has been confirmed by the Id.CIT(A) by passing an order dated 27.05.2025.

6.1 Aggrieved by the order of the Id.CIT(A) the assessee is before us.

7. The Id.AR for the assessee submitted that the Id.CIT(A) has erred in confirming the penalty, though the assessee's transactions declared under GST provisions cannot be called as business activity. Further he submitted the following written submissions:

“Further to the personal hearing we attended on 17/9/2025 we submit the following case laws in our favour.

1. Honorable Supreme Court in the case of joint Commercial tax officer Vs Young Man's India association (AIR 1970 SC 1212) While considering the case of a club, Supplying various refreshments prepared in the club to its members, Whether involves a transaction

of sale or not has held that if the club even though a distinct legal entity is only acting as an agent for its members in the matter of, Supply of various preparation to them no sale would be involved as the element of transfer should be completely absent.

2. Bangalore tribunal in the case of M/s.Century club in ITA No 205-207/Bang/2006 dated 28/07/2006 has held that the provision of section 44AB had no application to the club and further held that even assuming the provisions were applicable, the appellants Bonafide belief that it did not require to get the accounts audited under section 44AB amounted to a reasonable cause of cancelation of penalty.

3. Karnataka High court held in the case of M/s.Koramangala club Vs ITO that it is clear the assessee was under the Bonafide belief that the provision of section 44AB were not applicable to a club, while supplying beverage, liquor etc. to its members as it was not engaged in any business, but only a mutuality.

4. Further as per section 273B no penalty shall be imposable on a person or the assessee as case may be, for any failure referred to in the said provision if he proves that there was a reasonable cause for the said failure.

5. Section 273B covers section 271B also.

6. Appellant is of firm belief that its activities are covered under mutuality, tax audit U/s 44AB is not warranted and hence a reasonable cause for the said failure was clearly demonstrated.

7. In State of West Bengal Vs Calcutta club Limited, Where the Supreme Court held that services provided by club to their members were not liable for service tax due to the mutuality principal.

8. Based on the above Supreme Court Judgement and amendment was carried out in the section of CGST Act 2017 based on the outcome of the above stated Supreme Court Judgement 39" meeting of the council has inserted section 7(1) (aa) which reads as follows.

(1) For the purposes of this Act, the expression - "supply" includes

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

**Explanation** -For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

Hence under GST, tax is leviable on sales made by association/ Club to its members over ruling the mutuality concept but under income tax Act the principles of mutuality Continues and hence the appellant is not liable to gets its book audited U/s 44AB and therefore Penalty U/s 271AB is not valid.

9. The appellant prays Honourable Tribunal to render justice either U/s.271B or 273B of the Act.”

8. Per contra, the Id.DR for the revenue supported the orders of the authorities and submitted the following written submissions by praying to dismiss the appeal of the assessee:

“As per section 44AB of the Act every person carrying on business shall, if its total sales, turnover or gross receipts in business exceeds 1 crore rupees in any previous year get his accounts of such previous years, audited by an accountant before the specified date and furnish by that date, the report of such audit in the prescribed form duly signed and verified by such accountant. Failure, to get the accounts audited and furnish a report of such audit u/s 44AB results in levy of penalty of a sum equal to one and half percent of the total sales or a sum of Rs.1,50,000/-whichever is less. A perusal of section 44AB reveals that the said section is applicable in case of following conditions viz.

- Carrying on business
- Sales/turnover more than Rs 1 crore.

Assessee. Commissioner of Police Coimbatore Tamil Nadu Police canteen is set up by the Ministry of Home, Tamil Nadu for the benefit of police personnel Various consumer items are purchased from various suppliers and sold to police personnel As per assessee submission, the goods purchased are sold to police personnel at cost and there is no profit element in the transaction. During the year under consideration the turnover of the

assessee as per GSTR9 is to the extent of Rs. 32,33,16,631/-. However, as the assessee failed to get his accounts audited, the AO levied penalty u/s271B of an amount of Rs. 1,50,000/- The plea of the assessee before the Hon'ble Tribunal is that, since, the assessee operates under mutuality concept, assessee is not carrying on any business. In this regard, a crucial fact is that assessee is getting its accounts audited for the purposes of GST and was submitting audit report and GSTR9C The term business is defined in Section 2(13) of the Act as under.

“Business includes any trade commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture”.

2. While interpreting the word business the Hon'ble Supreme Court in the case of Barendra Prasad Ray vs. ITO [1981] 129 ITR 295(SC) holds the word business to be of wide import and that it means activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. The expression business does not necessarily mean trade or manufacture only.

3. The Hon'ble Supreme Court in case of Raipur Manufacturing Company Ltd[1967] 19 STC1 holds that the term business does not hinge solely on the motive of earning profit, though it predicates a motive which pervades a whole series of transaction effected by the person. The Supreme Court in case of General Family Pension Fund vs. CIT[1955]27 ITR 82 holds that though there is the significance of profit motive but it is not an essential element of business, for instance mutual concerns and societies carry on business but they usually do not have profit motive.

4. Reliance is also placed on the decision of House of Lords in the judgement in Commissioners of Inland Revenue vs. Cornish Mutual Assurance Company Ltd. [1926] 12 TC 841 wherein it is held that a mutual concern may be held to carry on a business or trade with its members, though the surplus arising from such trade is not income or profit.

5. The Hon'ble Supreme Court in CIT vs. Royal Western India Turf Club Ltd[1953] 24 ITR 551 held that the activity carried on by the assessee claiming to be a mutual concern or members club is a trade or an adventure in the nature of trade.

6. Hence, in the activity of repetitive supply of consumer durables, house hold articles, electric & electronic articles and groceries sold at cheaper rates by the assessee, wherein the cost is recovered from the beneficiaries, there exists a consideration received, even it is without any profit margin it is well covered within the wide import of the term 'Business' as defined in Section 2(13) of the Act.

7. Assessing officer has rightfully levied Penalty u/s 271B of the Act in case of assessee carrying an business with turnover in excess of the limits prescribe therein Section 44AB of the Act

8. Submitted for favourable consideration, please”.

9. The Id.AR for the assessee rebutted the arguments of the revenue by filing the following written submissions:

“To render natural justice to the Appellant we give below our reply on the points put forth by Id.DR.

Based on various Supreme Court Judgments the following conclusion can be made on principle of mutuality.

No man can trade with himself. He cannot make, in what is its sense or meaning or no man can make profit out of himself.

Section 28(iii) reads as follows

The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",-

(m) income derived by a trade, professional or similar association from specific services performed for its members;

The Kerala High Court in the case of CIT V Bus Operators Association (2013) 33 taxmann.com 586/(2012) 344 ITR 268 (Ker), following the decision of the supreme Court in the case of Chelmsford Club held that where the assessee, an association of bus operators, was engaged in purchase and distribution of tyres to automobile spares to its own members and profit, if any, arising in such transactions with its members, principle of mutuality is applied (Copy of the judgment enclosed).

Obviously the "specific services performed by the Association to the members referred to in the above provision will not cover the regular services rendered by the Association to all the members i.e. sale of tyres, automobile spare parts etc., purchased for distribution among the members at moderate cost. A specific service obviously will mean a service which is not available to members generally but specifically extended to a particular member or members against specific charges received.

The police canteen serves all members in general and no specific services are performed for any of its members.

Heading of section 44AB reads as audit of accounts of certain persons carrying on business or profession, hence to attract this section the assessee should carry on business.

Once mutuality is established there is no business activity.

Hence the Appellant is not liable to be tax audited U/s.44AB.

With regards to registration under GST a deeming provision (aa) in Section 7(1) was inserted to bring in taxability of transactions by a person other than individual to its members or constituents and added an explanation to the definition supply as given below:

Explanation to Sec 7(1) (aa) of CGST Act inserted w.e.f 01.01.2022

For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or **constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take** place from one such person to another]

Any deeming provision cannot be extended to other provision and the deeming should be restricted to that section only.”

10. We have heard the rival contentions perused the material available on record and gone through the orders of the lower authorities along with the case laws relied upon by both the parties and their written submissions. The assessee is a unit set up under government of Tamil Nadu home department to cater so the requirement of police personnel of household items such as groceries. The assessee procures household items from various suppliers and distributes to 9 canteens(units) which serve the requirements of police personnel. The assessee is established to serve them without any profit motive and established on the principles of mutuality.

11. The assessee filed its return of income for the Assessment Year 2022-23 on 22.12.2022 by declaring nil income. The Assessee's case was selected for scrutiny for the reason that 'it has shown substantially lower turnover in income tax return in comparison to turnover shown in GST returns filed and also has reported huge turnover exceeding statutory limit for tax audit as per section 44AB of the Act and tax audit report has not been filed.

12. During the assessment proceedings, the assessee filed the details called for from time to time before the assessing officer and concluded the assessment u/s.143(3) of the Act dated 20.03.2024 by accepting the return of income filed by the assessee under the concept of principles of mutuality. However, the assessing officer initiated separate penalty proceedings u/s.271B of the Act for non-filing of tax audit report u/s.44AB of the Act.

13. Subsequently the Assessing Officer (AO) issued notice u/s.274 r.w.s.271B of the Act for levy of penalty for failing to furnish the tax audit report as required u/s.44AB of the Act. The AO found that the assessee had transacted a turnover to the tune of Rs.32,33,16,631/- during the impugned assessment year but not filed the tax audit report u/s.44AB of the Act along with the return of income filed. Hence, the AO levied penalty of Rs.1,50,000/- u/s.271B of the Act by passing an order dated 23.09.2024. On appeal, the Id.CIT(A) upheld the levy of said penalty order.

14. Before us, the Id. Id.AR contended that the Id.CIT(A) erred in confirming the penalty, considering that the assessee's activities, although reflected as

turnover in the GST returns do not constitute 'business' under the Income-tax Act. It was submitted that the AO had accepted the assessee's return of income, which declared 'Nil' income under the mutuality principle. Conversely, the Id.DR argued that the turnover of the assessee exceeded the prescribed limits under Section 44AB, thereby necessitating a mandatory audit, and the failure to furnish the audit report justified the imposition of penalty under Section 271B of the Act.

15. Upon careful examination, we observe that all transactions undertaken by the assessee were exclusively with its members, and the same were reported under the GST regime. The AO, after a detailed scrutiny, accepted the returned income on the basis of mutuality, thereby acknowledging that the assessee was not carrying on any 'business' or 'profession' as contemplated under the Act. It is well settled that the provisions of Section 44AB of the Act apply only to income under the head "Profits and gains of business or profession." In the present case, since the assessee's activities do not fall within the ambit of "business or profession," the provisions of Section 44AB of the Act are inapplicable.

16. Therefore, the levy of penalty u/s.271B of the Act for failure to file the tax audit report u/s.44AB of the Act is not tenable under the present circumstances of the case.

17. In support of this view, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *Joint Commercial Tax Officer v. Young Men's*

*Indian Association* [AIR 1970 SC 1212], wherein it was held that in the case of a club supplying refreshments to its members, if the club is acting merely as an agent of its members, no element of sale exists in the transaction, and thus, it does not amount to a business activity.

18. Further, reliance is also placed on the decision of the Hon'ble Bangalore Bench of the ITAT in the case of *M/s. Century Club* in ITA Nos. 205–207/Bang/2006, dated 28.07.2006, wherein it was held that the provisions of Section 44AB are not applicable to a club functioning under the mutuality principle. The Tribunal also held that even if the said provisions were assumed to be applicable, the bona fide belief of the assessee that it was not required to comply with Section 44AB would constitute reasonable cause under Section 273B, thereby warranting cancellation of penalty.

19. We also draw support from the Hon'ble Karnataka High court held in the case of *M/s.Koramangala Club Vs ITO* (ITA No.279 & 280/2010 dated 26.02.2016) that it is clear the assessee was under the Bonafide belief that the provision of section 44AB of the Act were not applicable to a club, while supplying beverage, liquor etc. to its members as it was not engaged in any business, but only a mutuality.

20. In light of the above judicial precedents and the facts and circumstances of the present case, we are of the considered opinion that the learned CIT(A) has erred in upholding the penalty levied under Section 271B of the Act. Accordingly, we set aside the penalty order and direct the Assessing Officer to

delete the penalty. The grounds of appeal raised by the assessee are hereby allowed.

21. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 16<sup>th</sup> October, 2025 at Chennai.

**Sd/-**

(मनु कुमार गिरि)  
**(MANU KUMAR GIRI)**

न्यायिक सदस्य/**Judicial Member**

**Sd/-**

(एस. आर. रघुनाथा)  
**(S. R. RAGHUNATHA)**

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 16<sup>th</sup> October, 2025

**SP**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF