

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

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

S.A. No. 69/Coch/2025 (in ITA No. 451/Coch/2025) & ITA No. 451/Coch/2025 Assessment Year : 2019-20

M/s. Sayegh Paint Factories India Pvt. Ltd., XXII/260A, Angamaly Industrial Area, Angamaly South, Ernakulam, Kerala – 683 573. PAN: AAWCS2053A	Vs.	Corporate Circle – 2(1), Kochi.
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Smt. Leena Lal, Snr.AR

Date of Hearing	:	04-08-2025
Date of Pronouncement	:	30-10-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 15/05/2025 in respect of the A.Y. 2019-20 and raised the following grounds:

	<i>Grounds of Appeal</i>	<i>Tax effect relating to each ground of appeal (see note below)</i>
1	<i>III. Legal pronouncements 12- The Honourable Chennai in the case of M/s Encore Construction- Consortium Pvt Ltd Vs ITO (ITAT Chennai) held that delay in filing of tax audit report due to dispute between the directors of the assessee company is just a technical breach without any malafide intention. Hence, penalty u/s 271B not leviable.</i>	<i>Rs 0</i>
2	<i>I. Factual background 1- The Appellant is a subsidiary of National Paints Holdings Ltd. During the Financial Year 2018-19, due to internal disputes among the domestic directors and the holding company, the Company was unable to convene its Annual General Meeting. 2- As per the Companies Act, the Company is required to present the audited financial statements, Director's Report, and Auditor's Report at the AGM. The accounts must first be approved by the Board before submission for audit and subsequent presentation to the shareholders at the AGM. 3- Since the financials were neither approved by the Board nor adopted at the AGM, the Appellant could not file the Income Tax Return and the Audit Report under Section 44AB within the prescribed timelines. 4- National Paints Holdings Ltd. filed a petition before the Hon'ble NC LT, Kochi Bench, seeking directions for convening an AGM and appointing new directors. Pursuant to the NCLRs direction, the AGM was conducted on 22.05.2021.</i>	<i>Rs. 150000</i>

3	<p><i>Subsequent compliance and condonation 5- A condonation petition was filed before the Principal Commissioner of Income Tax (PCIT), Ernalculam on 01.10.2021. The delay was condoned vide order dated 19.05.2023. However, prior to this, the case was taken up for scrutiny under Section 148 of the Act. 6- Following the adoption of the financial statements at the AGM, the Appellant promptly filed the return of income and the audit report. 7- The learned Commissioner (Appeals) erred in confirming the penalty under Section 271B by holding that the delay in filing the Audit Report was not condoned. The Income-tax Act, 1961 does not contain any provision mandating prior condonation of delay before furnishing a tax audit report under Section 44AB. 8- The delay in filing audit report is legitimate, for reasons beyond the control of the company as the accounts are not adopted and there was a litigation pending with National Company Law Tribunal NCLT.</i></p>	Rs. 0
4	<p><i>9-Also, reference is given to section 273B stating that no penalty shall be imposable on the person OR the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure. 10- The learned commissioner (appeals) failed to consider the genuine and documented reason for delay in filing the audit report (viz., disputes among directors and ongoing NCLT proceedings), which qualifies for protection under Section 273B of the Act. 11- The learned Commissioner (Appeals) issued the order asserting that the appellant failed to appoint an auditor, despite clear evidence to the contrary. The resolution passed at the EGM on July 15, 2019, and corresponding MGT 14 filed with ROC which is attached, explicitly confirms the appointment of a Chartered Accountant</i></p>	Rs. 0

5	<i>IV. Violation of principles of natural justice 13- The impugned order was passed without granting the Appellant an opportunity for a personal hearing, including the option of a video conferencing hearing, as mandated under Section 144B(6)(vii) of the Act. This omission amounts to a violation of the principles of natural justice and contravenes the faceless assessment scheme, thereby infringing the Appellant's rights under Article 14 of the Constitution of India.</i>	Rs. 0
6	<i>V. Appellant request 14- In light of the above, it is respectfully prayed that the Hon'ble Tribunal may: - Set aside the penalty imposed under Section 271B of the Act. - Hold that the delay in filing the audit report was due to a reasonable cause and therefore protected under Section 273B; and - Pass any other relief as deemed just and appropriate in the facts and circumstances of the case.</i>	Rs.0
<i>Total Tax Effect</i>		Rs. 1,50,000

2. The brief facts of the case are that the assessee is a subsidiary of National Paints Holdings Ltd. and because of the internal disputes among the Directors, the company was unable to convene its Annual General Body Meeting. As per the provisions of the Companies Act, the company is required to present the audited financial statements, Directors report and the auditors report at the Annual General Body Meeting. Before that the accounts should be approved by the Board. Since the financials were not approved by the Board, the same could not be placed before the AGM and therefore there was a delay in filing the income tax return and the audit report u/s. 44AB of the Act.

3. Only after the National Paint Holdings Company approached the Hon'ble National Company Law Tribunal, Cochin Bench seeking directions for convening the AGM and for appointing of Directors, the AGM was

conducted on 22/05/2021 and the financials were approved by the general body.

4. In the meanwhile, the AO had issued a notice u/s. 148 on 17/03/2023 and the assessee also filed the return on 15/04/2023 declaring a loss. Before the issuance of the notice u/s. 148, the assessee having known that the return was not filed in time, had filed an application to condone the delay for filing the return u/s. 119(2)(b) of the Act to the PCIT, Ernakulam on 01/10/2021. Before PCIT had condoned the said delay, the 148 notice was issued and pursuant to that, the return was filed along with the audit report. The AO completed the assessment by accepting the return filed by the assessee and thereafter initiated proceedings on 04/03/2024 to levy penalty u/s. 271B of the Act for not filing the audit report in time. The assessee had explained the circumstances under which the return could not be filed in time. In the meanwhile on 19/05/2023, the Ld.PCIT had also condoned the delay in filing the return of income for the A.Y. 2019-20. Before the PCIT had condoned the said delay, based on the 148 notice, the return as well as the audit report u/s. 44AB of the Act were filed and based on that, the assessment has been completed without making any additions. Not satisfied with the reply, the AO had confirmed the penalty u/s. 271B of the Act. As against the said order, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) had confirmed the order of the AO.

5. As against the said order, the present appeal has been filed before this Tribunal.

6. At the time of hearing, none appeared for the assessee and from the facts and the grounds we found that the return of income along with the audit report could not be filed in time because of the dispute and only pursuant to the direction of the NCLT, Cochin Bench, the AGM was conducted and accounts were finalised. In the meanwhile, the assessee also approached the PCIT for condoning the said delay in filing the return of

income. Thereafter, the Ld.PCIT had condoned the said delay on 19/05/2023 but before the said date, the assessee had filed their return of income and the audit report pursuant to the notice issued u/s. 148.

7. The Ld.DR relied on the orders of the lower authorities.

8. We have heard the arguments of the Ld DR and perused the materials available on record.

9. In the present case, the assessee had disputed the levy of penalty u/s. 271B of the Act on the ground that the Ld.PCIT had condoned the delay in filing the return on 19/05/2023 but before the order passed by the Ld.PCIT, the assessee had filed the return of income on 15/04/2023 pursuant to the notice issued u/s. 148 of the Act. The assessee along with the return of income had also filed the audit report in 3CD. The Ld.PCIT had considered the circumstances which prevented the assessee from filing the return of income in time and condoned the said delay vide its order dated 19/05/2023. Having the Ld.PCIT had condoned the said delay in filing the return on 19/05/2023, the return and the audit report in 3CD filed by the assessee on 15/04/2023 could not be taken as a delay for the purpose of imposing penalty u/s. 271B of the Act. No doubt, the books of accounts were audited and only because of the disputes in the management of the company, the accounts could not be finalised and return of income could not be filed in time.

10. Considering the entire facts and circumstances and also the fact that the Ld.PCIT had condoned the delay in filing the return of income on 19/05/2023, we are of the view that this is not a fit case for levy of penalty u/s. 271B of the Act. Since we are disposing of the main appeal, the stay application becomes infructuous and therefore we are dismissing the same.

11. In the result, the appeal filed by the assessee is allowed and the stay petition is dismissed as infructuous.

Order pronounced in the open court on 30th October, 2025.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Cochin,
Dated, the 30th October, 2025
/MS /

Copy to:

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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