

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai**

**Before Shri G. Manjunatha, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No.346/Mum/2018
(Assessment Year: 2011-12)**

Dena Bank Employees
Co-Op Credit Society Ltd.
Dena Bank Building, 17,
Horniman Circle, Fort,
Mumbai 400 023
PAN – AAAAD0093P

Income Tax Officer -12(3)(3)
Room No. 123-A , Aaykar Bhavan,
Mumbai- 400020

(Appellant)

(Respondent)

Appellant by: Shri Hardik M. Sarvaiya, A.R

Respondent by: Shri D.G. Pansari, D.R

Date of Hearing: 27.02.2019

Date of Pronouncement: 29.03.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-28, Mumbai, dated 03.10.2017, which in turn arises from the order passed by the A.O under Sec. 271B of the Income Tax Act, 1961 (for short 'IT Act'), dated 07.02.2014 for A.Y. 2011-12. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal :-

- “1. On the fact and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals) erred in confirming the Penalty u/s 271B of Rs.73,796/- without appreciating the facts of the case and submissions made.
2. The Appellant prays that the penalty of Rs.73,796/- Levied U/s 271B be deleted.

3. *The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of Appeal.”*

2. Briefly stated, the assessee which is a co-operative society had filed its return of income for A.Y. 2011-12 on 26.03.2012, declaring Nil income. Assessment under Sec.143(3) was framed in its case vide order dated 20.09.2013, determining the total income at Rs. 2,63,380/-.

3. During the course of the assessment proceedings the A.O observed that as the gross receipts of the assessee for the year under consideration was in excess of the monetary limit prescribed for audit under Sec. 44AB of the IT Act, therefore, it was obligated to have got its accounts for the said year 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 along with setting forth of such particulars as may be prescribed. Observing, that the assessee had failed to get its account audited and furnish the ‘audit report’ as required under Sec. 44AB latest by the ‘due date’ for filing its return of income for the year under consideration, therefore, the A.O called upon the assessee vide ‘Show cause’ notice, dated 02.09.2013 to explain as to why penalty under Sec. 271B may not be imposed on it.

4. In reply, it was submitted by the assessee that as its accounts for F.Y. 2010-11 were being computerized, therefore, the same could not be finalized within the stipulated time period. Apart there from, it was submitted by the assessee that due to non-finalization of the accounts in time the ‘Annual General Meeting’ (for short ‘AGM’) of the assessee society also could not be held within the stipulated time period envisaged under the Maharashtra Co-operative Societies Act, 1960. It was the claim of the assessee that for the aforesaid delay it

had approached the Registrar, Co-operative societies, Maharashtra for extension of time for holding the AGM, which after necessary satisfaction as regards the genuineness of the cause for delay extended the same till 14.11.2011, vide his order No. 3151, dated 01.11.2011. It was further submitted by the assessee that though it had got its accounts for the year under consideration audited under Sec. 44AB, however, the same for the aforementioned reasons involved a negligible delay. It was also the claim of the assessee that the reasonableness of the cause leading to the delay in obtaining the 'audit report' was after necessary deliberations accepted by the Registrar, Co-operative Societies, Maharashtra and the time for holding the AGM was extended.

5. The A.O after giving a thoughtful consideration to the reply submitted by the assessee was not persuaded to accept the same. It was observed by the A.O that the assessee had failed to come forth with a reasonable cause that had prevented it from getting its accounts audited in time and furnishing the 'audit report' along with its return of income. It was noticed by the A.O that though the assessee in the course of the assessment proceedings had placed on record the 'audit report' in Form No. 3CA and 3CD, signed by a chartered accountant and four senior office bearers of the society (i.e. Treasurer, Jt. Secretary, Vice Chairman & Chairman), but the said report did not bear any date. On the basis of the aforesaid facts the A.O held a conviction that the claim of the assessee of having obtained the 'audit report' on 05.10.2011 was not substantiated by any documentary evidence. In fact, the A.O was of the view that as the assessee had filed the return of income on 26.03.2012, therefore, it could safely be concluded that the 'audit report' was not ready as on 05.10.2011. Apart there from, the A.O was of the view that as the

assessee was regularly filing its returns and audit reports in time in the past years, therefore, there was no valid reason for the delay in getting its accounts for the year under consideration audited in time. Insofar the claim of the assessee that the delay had taken place for the reason that its accounts were being computerized during the relevant period was concerned, the same did not find favour with the A.O. It was observed by the A.O that as the 'audit report' was required to be furnished after six months from the end of the financial year, therefore, the assessee being well aware of its statutory obligation of getting its accounts audited and furnishing the 'audit report' within the time period envisaged under the IT Act had sufficient time for having done the needful in order to have effected timely compliance of the same. In the backdrop of his aforesaid observations, it was concluded by the A.O that as the assessee which was an organization that was giving loans/credit facilities to its members and was carrying out limited activities had failed to get its accounts audited as per Sec. 44AB and furnish the 'audit report' along with its return of income upto the 'due date' prescribed under Sec. 139(1) of the IT Act, therefore, it had rendered itself liable for penalty under Sec. 271B. On the basis of his aforesaid observations the A.O imposed a penalty of Rs. 73,796/- under Sec. 271B of the IT Act.

6. Aggrieved, the assessee assailed the penalty imposed by the A.O under Sec. 271B in appeal before the CIT(A). The CIT(A) after deliberating at length on the contentions advanced by the assessee did not find favour with the same and dismissed the appeal.

7. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Ld. Authorized Representative (for short 'A.R') for the assessee reiterated the submissions that were raised before the lower authorities. It was

submitted by the Ld. A.R that as accounts of the assessee society were being computerized, therefore, the same could not be finalized in time and also the AGM of the society could not be held within the stipulated time period. It was the contention of the Ld. A.R that as the Registrar, Co-operative Societies, Maharashtra after being satisfied with the genuineness of the cause for delay in holding the AGM had extended the time for holding the same till 14.11.2011, therefore, both the genuineness and reasonableness of the cause leading to the delay in finalization of the accounts stood duly established. In sum and substance, it was submitted by the Ld. A.R that as there was a reasonable cause on the part of the assessee for not getting its accounts audited and furnishing the 'audit report' within the time limit envisaged in Sec. 44AB of the IT Act, therefore, as per Sec. 273B no penalty could have been imposed in its hands under Sec.271B.

8. Per contra, the Learned Departmental Representative (for short 'D.R') submitted that as the assessee without any reasonable cause had delayed the furnishing of the 'audit report' which was filed only in the course of the assessment proceedings on 13.12.2012, therefore, the A.O had rightly imposed penalty under Sec. 271B of the IT Act.

9. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, the assessee co-operative society which was obligated to have got its accounts audited by a chartered accountant and furnish the 'audit report' in the prescribed form viz. Form No. 3CA and 3CD latest by the 'due date' for furnishing of its return of income under sub-section (1) of Sec. 139 i.e. 30.09.2011, had however filed the same only in the course of the assessment proceedings vide its letter dated 13.12.2012. We have perused the orders of the lower authorities and find ourselves to be in agreement

with the view therein taken that though it is the claim of the assessee that it had obtained the audit report on 05.10.2011, however, no material had been placed on record to substantiate the same. Interestingly, a perusal of the 'audit report' reveals that the same bears a date of 10 October, 2011 (Page 29 of 'APB'), which thus clearly contradicts the claim of the assessee of having obtained the same as on 05.10.2011. Apart there from, the fact that the assessee had filed its return of income on 26.03.2012 also fortifies the view taken by the lower authorities that the 'audit report' was not ready as on 05.10.2011. Be that as it may, the fact as it so remains is that the 'audit report' furnished by the assessee on 13.12.2012 i.e. in the course of the assessment proceedings involves a substantial delay which the assessee had failed to explain on the basis of any plausible explanation. Insofar the claim of the assessee that the Registrar, Co-operative Societies, Maharashtra after being satisfied with the genuineness of the cause for delay in finalization of the accounts had granted extension of the time limit for holding the AGM till 14.11.2011 is concerned, we are unable to persuade ourselves to accept the said explanation of the assessee for justifying the delay involved in furnishing of the 'audit report'. The aforesaid explanation given by the assessee is not acceptable primarily for two reasons viz. (i) that the extension of the time limit for holding the AGM of the society would not automatically justify the delay in furnishing the 'audit report' within the stipulated time period envisaged under Sec. 44AB of the IT Act; and (ii) that even otherwise the assessee had not given any explanation for the delay falling between the period i.e. 14.11.2011 (extended time limit for holding of AGM) and 13.12.2012 (i.e. date of furnishing of audit report). Apart there from, as the claim of the assessee that it had obtained the 'audit report' on 05.10.2011 clearly militates against the facts borne from the records, therefore, the same

also cannot be accepted. In sum and substance, as the assessee had clearly failed to come with clean hands and explain the reason leading to the delay in furnishing the 'audit report' within the stipulated time period envisaged in Sec. 44AB of the IT Act, therefore, the provisions of Sec. 273B would not come to its rescue. We thus finding no infirmity in the order of the CIT(A) who in our considered view had rightly confirmed the penalty of Rs. 73,796/- imposed by the A.O under Sec. 271B, uphold his order.

10. The appeal of the assessee is dismissed.

Order pronounced in open court on 29.03.2019

Sd/-
(G.Manjunatha)
Accountant Member
मुंबई Mumbai; दिनांक 29.03.2019
Ps. Rohit

Sd/-
(Ravish Sood)
Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai

