



2024:KER:87634

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE K.V. JAYAKUMAR

FRIDAY, THE 22ND DAY OF NOVEMBER 2024/1ST AGRAHAYANA, 1946

I.T.A.NO.9 OF 2023

AGAINST THE ORDER DATED 12.06.2023 IN I.T.A.NO.30/COCH/2023:
ASST. YEAR 2017-18 OF THE INCOME TAX APPELLATE TRIBUNAL,
COCHIN BENCH

APPELLANT/APPELLANT/ASSESSEE:

THE CHAVAKKAD SERVICE CO-OPERATIVE BANK
LTD.NO.F.9991
CHAVAKKAD.P.0, THRISSUR - REPRESENTED BY ITS
SECRETARY, PIN - 680506

BY ADV.SRI.P.C.SASIDHARAN

RESPONDENT/RESPONDENT/REVENUE:

THE INCOME TAX OFFICER
WARD 1 & TPS, GURUVAYOOR, THRISSUR,
OFFICE OF THE INCOME TAX OFFICER,
WEST NADA, GURUVAYOOR, THRISSUR, PIN - 680101

BY SRI.P.G. JAYASHANKAR, SC, INCOME TAX DEPARTMENT
BY SRI.KEERTHIVAS GIRI, SC, INCOME TAX DEPARTMENT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 18.11.2024 ALONG WITH I.T.A.NO.10 OF 2023 AND
CONNECTED CASES, THE COURT ON 22.11.2024 DELIVERED THE
FOLLOWING:



2024:KER:87634

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE K.V. JAYAKUMAR

FRIDAY, THE 22ND DAY OF NOVEMBER 2024/1ST AGRAHAYANA, 1946

I.T.A.NO.10 OF 2023

AGAINST THE ORDER DATED 12.06.2023 IN I.T.A.NO.29/COCH/2023
:ASST. YEAR 2012-2013 S.A.NO.5/COCH.2023 OF THE INCOME TAX
APPELLATE TRIBUNAL, COCHIN BENCH

APPELLANT/APPELLANT/ASSESSEE:

THE CHAVAKKAD SERVICE CO-OPERATIVE BANK LTD.NO.F.9991
CHAVAKKAD.P.O, THRISSUR REPRESENTED BY ITS SECRETARY.,
PIN - 680506

BY ADV.SRI.P.C.SASIDHARAN

RESPONDENT/RESPONDENT/REVENUE:

THE INCOME TAX OFFICER
WARD 1 & TPS, GURUVAYOOR, THRISSUR,
OFFICE OF THE INCOME TAX OFFICER, WEST NADA,
GURUVAYOOR, THRISSUR., PIN - 680101

BY SRI.P.G. JAYASHANKAR, SC, INCOME TAX DEPARTMENT
BY SRI.KEERTHIVAS GIRI, SC, INCOME TAX DEPARTMENT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 18.11.2024 ALONG WITH I.T.A.NO.9 OF 2023 AND
CONNECTED CASES, THE COURT ON 22.11.2024 DELIVERED THE
FOLLOWING:



2024:KER:87634

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE K.V.JAYAKUMAR

FRIDAY, THE 22ND DAY OF NOVEMBER 2024/1ST AGRAHAYANA, 1946

I.T.A.NO.14 OF 2023

AGAINST THE ORDER DATED 30.06.2023 IN I.T.A.NO.31/COCH/2023
:ASST. YEAR 2017-2018 S.A.NO.7/COCH.2023 OF THE INCOME TAX
APPELLATE TRIBUNAL, COCHIN BENCH

APPELLANT/APPELLANT/ASSESSEE:

THE ELAVALLY SERVICE CO-OPERATIVE BANK LTD.NO.372,
VAKRA.P.O, THRISSUR, REPRESENTED BY ITS SECRETARY,
PIN - 680602

BY ADV.SRI.P.C.SASIDHARAN

RESPONDENT/RESPONDENT/REVENUE:

THE INCOME TAX OFFICER,
WARD 1 & TPS, GURUVAYOOR, THRISSUR,
OFFICE OF THE INCOME TAX OFFICER, WEST NADA,
GURUVAYOOR, THRISSUR, PIN - 680101

BY SRI.P.G. JAYASHANKAR, SC, INCOME TAX DEPARTMENT
BY SRI.KEERTHIVAS GIRI, SC, INCOME TAX DEPARTMENT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
18.11.2024 ALONG WITH I.T.A.NO.9 OF 2023 AND CONNECTED
CASES, THE COURT ON 22.11.2024 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE K.V.JAYAKUMAR

FRIDAY, THE 22ND DAY OF NOVEMBER 2024/1ST AGRAHAYANA, 1946

I.T.A.NO.25 OF 2023

AGAINST THE ORDER DATED 28.04.2023 IN I.T.A.NO.951/COCH/2022
FOR THE ASST. YEAR 2014-2015 OF THE INCOME TAX APPELLATE
TRIBUNAL, COCHIN BENCH

APPELLANT/APPELLANT/ASSESSEE:

KUNDAYAM SERVICE CO-OPERATIVE BANK LTD. NO.3259,
REPRESENTED BY ITS SECRETARY, KUNDAYAM P.O,
PATHANAPURAM, KOLLAM DISTRICT., PIN - 689695

BY ADV.SRI.ARJUN RAGHAVAN
BY ADV.SRI.T.R.HARIKUMAR
BY ADV.SMT.POOJA PANKAJ

RESPONDENT/RESPONDENT/REVENUE:

INCOME TAX OFFICER
WARD-4, AAYAKAR BHAVAN, NEAR KARBALA JUNCTION,
KOLLAM DISTRICT., PIN - 691001

BY SRI.P.G.JAYASHANKAR, SC, INCOME TAX DEPARTMENT
BY SRI.KEERTHIVAS GIRI, SC, INCOME TAX DEPARTMENT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 18.11.2024 ALONG WITH I.T.A.NOS.9/2023, 10/2023 AND
CONNECTED CASES, THE COURT ON 22.11.2024 DELIVERED THE
FOLLOWING:



2024:KER:87634

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE K.V.JAYAKUMAR

FRIDAY, THE 22ND DAY OF NOVEMBER 2024/1ST AGRAHAYANA, 1946

I.T.A.NO.35 OF 2023

AGAINST THE ORDER DATED 05.06.2023 IN I.T.A.NO.105/COCH/2023
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

APPELLANT(S)/APPELLANT/ASSESSEE:

THE PARAVUR SERVICE CO-OPERATIVE BANK LTD.NO.1801
REPRESENTED BY ITS SECRETARY, PARAVUR P.O,
KOLLAM DISTRICT., PIN - 691301

BY ADV.SRI.ARJUN RAGHAVAN
BY ADV.SMT.POOJA PANKAJ
BY ADV.SRI.T.R.HARIKUMAR

RESPONDENT(S)/RESPONDENT/RESPONDENT:

INCOME TAX OFFICER
INCOME TAX DEPARTMENT, AAYAKAR BHAVAN, KOLLAM.,
PIN - 691001

BY SRI.P.G.JAYASHANKAR, SC, INCOME TAX DEPARTMENT
BY SRI.KEERTHIVAS GIRI, SC, INCOME TAX DEPARTMENT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
18.11.2024 ALONG WITH I.T.A.NO.9 OF 2023 AND CONNECTED
CASES, THE COURT ON 22.11.2024 DELIVERED THE FOLLOWING:



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"C.R."

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

As all these I.T.Appeals that are preferred by Co-operative Societies raise common questions of law, they are taken up together for consideration and disposed by this common judgment.

2. The appellants/assesseees are Co-operative Societies who had filed returns of income for the purposes of assessment under the Income Tax Act [hereinafter referred to as the "I.T. Act"]. In breach of the provisions of Section 44AB of the I.T. Act, however, they did not file the audit report as mandated under the said provision within the time limit specified there under. However, the audit reports were made available before the Assessing Authority at the time of finalisation of the assessments. In fact, the Assessing Authority completed the assessments by relying on the said audit reports, but while passing the assessment orders, initiated penalty proposals under Section 271B of the I.T. Act for alleged breach of the procedure contemplated under Section 44AB of the I.T. Act.

3. In the penalty proceedings that ensued, the appellants/assesseees were imposed with penalties of Rs.1.5 lakhs, which



was the lesser of the two amounts mentioned in Section 271B of the I.T. Act, by rejecting the explanations offered by the assesseees for the delay in producing the audit reports. The orders of the Assessing Authority imposing penalty were upheld by the First Appellate Authority and thereafter by the Appellate Tribunal in appeals preferred by the assesseees.

4. In the appeals before us, the appellants/assesseees raise the following questions of law:

I.T.A.No.9 of 2023:

- (i) Whether on the facts and circumstances of the case the imposition of penalty is justified or not ?
- (ii) Whether in the facts and circumstances of the case and in view of the decision in Mavilayi Society's case, that the primary agricultural credit societies are entitled for exemption under Section 80P of the Act, and independent of an assessment of tax imposition of penalty is justified or not ?
- (iii) Whether on the facts and circumstances of the case the assessee's explanation for not furnishing the audit report ought to have been accepted and the penalty imposed is one liable to be interfered with ?
- (iv) Whether in the facts and circumstances of the case the Tribunal justified in holding that the imposition of penalty on the assessee is justified ?
- (v) Whether the Tribunal is correct in not following the binding judgments of the coordinate benches in ITA Nos.601/2018 & ITA No.504/2018 ?

I.T.A.No.10 of 2023:

- (i) Whether on the facts and circumstances of the case the imposition of penalty is justified or not ?
- (ii) Whether in the facts and circumstances of the case and in view of the decision in Mavilayi Society's case, that the primary agricultural credit societies are entitled for exemption under Section 80P of the Act, and independent of an assessment of tax imposition of penalty is justified or not ?



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(iii) Whether on the facts and circumstances of the case the assessee's explanation for not furnishing the audit report ought to have been accepted and the penalty imposed is one liable to be interfered with ?

(iv) Whether in the facts and circumstances of the case the Tribunal justified in holding that the imposition of penalty on the assessee is justified ?

(v) Whether the Tribunal is correct in not following the binding judgments of the coordinate benches in ITA Nos.601/2018 & ITA No.504/2018 ?

I.T.A.No.14 of 2023:

(i) Whether on the facts and circumstances of the case the imposition of penalty is justified or not ?

(ii) Whether in the facts and circumstances of the case and in view of the decision in Mavilayi Society's case, that the primary agricultural credit societies are entitled for exemption under Section 80P of the Act, and independent of an assessment of tax imposition of penalty is justified or not ?

(iii) Whether on the facts and circumstances of the case the assessee's explanation for not furnishing the audit report ought to have been accepted and the penalty imposed is one liable to be interfered with ?

(iv) Whether in the facts and circumstances of the case the Tribunal justified in holding that the imposition of penalty on the assessee is justified ?

(v) Whether the Tribunal is correct in not following the binding judgments of the coordinate benches in ITA Nos.601/2018 & ITA No.504/2018 ?

I.T.A.No.25 of 2023:

(a) Whether on the facts and circumstances of the case, the imposition of penalty is justified or not ?

(b) Whether the imposition of penalty upon the appellant is justified, when the claim for deduction under Section 80P stands allowed by the Tribunal ?

(c) Whether the imposition of penalty upon appellant under Section 271B can be considered as an arbitrary exercise of power, especially in wake of the fact that the appellant had duly furnished the returns as audited by the department authorities under the domain of Kerala Co-operative Societies Act ?

(d) Whether the non-filing of returns in the stipulated format by itself would attract a penalty, when the assessee is claiming its entire income as to deducted under Section 80P ?

(e) Whether the penalty proceedings initiated under Section 271B is



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in disregard of Section 273, or without examining it in the touchstone of 'without reasonable cause' as stipulated under Section 271B ?

(f) Whether in the facts and circumstances of the case and in view of declaration of law in Mavilayi Service Co-operative Bank vs. Income Tax Officer, reported in ILR 2021 (1) Ker 423, Principal Commissioner of Income Tax vs. Annsaheb Patil Mathadi Kamgar Sahkari Pathpedi Ltd, reported in 2023 (4) KLT SN 9 (CN 7), and KSCARD Bank vs. Assessing Officer, Trivandrum & Ors (Judgment in Civil Appeal 5005-5007 of 2019), with respect to the entitlement of Appellant to claim deduction under Section 80P, whether the imposing of penalty upon appellant is justifiable ?

I.T.A.No.35 of 2023:

(a) Whether on the facts and circumstances of the case, the imposition of penalty is justified or not ?

(b) Whether the imposition of penalty upon the appellant is justified, when the claim for deduction under Section 80P is yet to be considered by the appellate authority ?

(c) Whether the imposition of penalty upon appellant under Section 271B can be considered as an arbitrary exercise of power, especially in wake of the fact that the appellant had duly furnished the returns as audited by the department authorities under the domain of Kerala Co-operative Societies Act ?

(d) Whether the non-filing of returns in the stipulated format by itself would attract a penalty, when the assessee is claiming its entire income as to deducted under Section 80P ?

(e) Whether the penalty proceedings initiated under Section 271B is in disregard of Section 273, or without examining it in the touchstone of 'without reasonable cause' as stipulated under Section 271B ?

(f) Whether in the facts and circumstances of the case and in view of declaration of law in Mavilayi Service Co-operative Bank vs. Income Tax Officer, reported in ILR 2021 (1) Ker 423, Principal Commissioner of Income Tax vs. Annsaheb Patil Mathadi Kamgar Sahkari Pathpedi Ltd, reported in 2023 (4) KLT SN 9 (CN 7), and KSCARD Bank vs. Assessing Officer, Trivandrum & Ors (Judgment in Civil Appeal 5005-5007 of 2019), with respect to the entitlement of Appellant to claim deduction under Section 80P, whether the imposing of penalty upon appellant is justifiable ?

5. We have heard Sri.P.C.Sasidharan and Sri.Arjun Raghavan, the learned counsel appearing for the appellants/assesseees in all these appeals and Sri.P.G.Jayashankar and Sri.Keerthivas Giri, the learned Standing Counsel for the Income Tax Department in the



aforementioned cases.

6. The sole issue that arises for consideration in these appeals is the legality of the penalty that was imposed on the assessee Societies under Section 271B of the I.T. Act for the alleged breach of the procedural provisions under Section 44AB of the I.T. Act. Section 44AB of the I.T. Act prescribes a procedure of audit of accounts by certain categories of assesseees and deals *inter alia* with the manner in which reports of such audit have to be submitted before the Assessing Authority under the I.T. Act. Section 44AB of the I.T. Act reads as under:

“Audit of accounts of certain persons carrying on business or profession.

44AB. Every person,—

(a) carrying on business **shall**, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year :

Provided that in the case of a person whose -

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment,

this clause shall have effect as if for the words “one crore rupees”, the words ten crore rupees” had been substituted.

Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash; or

(b) carrying on profession shall, if his gross receipts in profession exceeded fifty lakh rupees in any previous year; or



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(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous 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 and setting forth such particulars as may be prescribed:

Provided that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year:

Provided further that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later:

Provided also that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section." (*emphasis supplied*)

It is significant to note that the phraseology used under Section 44AB of the I.T. Act, while dealing with the procedure to be followed in the matter of getting the accounts audited, is "shall".

7. Section 271B of the I.T. Act deals with the consequences of a failure to get accounts audited in the manner contemplated under Section 44AB of the I.T. Act. The said provision reads as under:



“Failure to get accounts audited.

271B. If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer **may** direct that such person **shall** pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred fifty thousand rupees, whichever is less.” (*emphasis supplied*)

Significantly, under Section 271B of the I.T. Act, the phraseology of “may” is used while dealing with the discretion of the Assessing Authority with regard to whether or not a penalty should be imposed and the phrase “shall” is used while specifying the quantum of penalty that is to be imposed. In other words, while the Assessing Authority has a discretion in the matter of whether or not a penalty is to be imposed, there is no such discretion available to the Assessing Authority in deciding the quantum of penalty once he/she finds that penalty has to be imposed. The quantum of penalty that has to be imposed is specified as being the lower among the two figures of (a) a sum equal to one-half percent of the total sales, turnover or gross receipts in business or of the gross receipts in profession in such previous years or years and (b) one hundred and fifty thousand rupees.

8. The circumstances under which the Assessing Authority can absolve an assessee from the payment of penalty under Section 271B of the I.T. Act are discernible from a reading of Section 273B which



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reads as under:

“Penalty not to be imposed in certain cases.

273B. Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FAB, section 271FB, section 271G, section 271GA, section 271GB, section 271H, section 271-I, section 271J, clause (c) or clause (d) of subsection (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, **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.**” (*emphasis supplied*)

It merits notice that the phraseology used in Section 273B of the I.T. Act is such that no penalty can be imposed on an assessee under Section 271B for breach of the provisions, if he proves that there was “reasonable cause” for the said failure.

9. The moot question that arises in these cases is whether the assessee Societies had demonstrated a reasonable cause for the delay in submitting audit reports as mandated under Section 44AB of the I.T. Act before the Assessing Authority ? If the assesseees could demonstrate that there were valid reasons for the delay occasioned in submitting the audit reports before the Assessing Authority, and that they were on account of reasons beyond the control of the assesseees, then the threshold of reasonable cause would be crossed by the assesseees. The reason cited by the assesseees herein, before the



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Assessing Authority, was that, being Co-operative Societies regulated by the provisions of the Kerala Co-operative Societies Act and Rules, their accounts had to be mandatorily audited in terms of the said statutory provisions and the delay in submitting the audit reports before the Income Tax Authorities was occasioned solely on account of the fact that there had been a corresponding delay in receiving the audit reports from the statutory auditors appointed under the Kerala Co-operative Societies Act and Rules. The said explanation offered by the assesseees was not accepted by the Assessing Authority at the first instance because he was of the view that once it was established that there was a delay in submitting the audit reports prescribed in Section 44AB of the I.T. Act, the penalty under Section 271B of the I.T. Act was automatic. In the appeals before the First Appellate Authority, although the First Appellate Authority noticed the provisions of Section 273B that mandated that a penalty could not be imposed whenever reasonable cause was shown, on facts, he was of the view that reasonable cause had not been shown. The views of the First Appellate Authority were accepted by the Appellate Tribunal which took the view that the assesseees had not demonstrated reasonable cause for the delay occasioned, and hence, the penalty imposed on the appellants/assesseees did not require any interference.

10. The issue that we are thus called upon to examine in these cases is whether the delay in obtaining the audit reports from the



statutory auditors under the Kerala Co-operative Societies Act and Rules can be seen as a reasonable cause for the delayed submission of the audit reports before the Assessing Authority under the I.T. Act, more so, when it is the admitted case that the audit reports, albeit not made available before the due date prescribed under the I.T. Act, were made available before the Assessing Authority at the time of finalisation of the assessment ? To answer the said question, we need to briefly survey the statutory provisions obtaining under the Kerala Co-operative Societies Act and Rules. Sections 63 and 64 of the Kerala Co-operative Societies Act read with Section 64B of the Kerala Co-operative Societies Rules read as follows:

The Kerala Co-operative Societies Act:

63. Director of Co-operative Audit.- (1)The Government shall, by notification in the official Gazette, appoint a person to be the Director of Co-operative Audit with jurisdiction over the whole of the State.

(2) The qualification and the terms and conditions of the person to be appointed as the Director of Co-operative Audit shall be such, as may be prescribed.

(3) The Government may by general or special order, delegate all or any of the powers of the Director of Co-operative Audit, in the Act to his subordinate officers or to the subordinate officers of the Registrar.

(4) It shall be the duty of the managing committee cause to audit the accounts of every society at least once every year:

Provided that the accounts of every society shall be audited within six months of the close of the financial year to which such accounts relate.

Provided further that in the case of those societies which are liable to file income tax returns, financial statements for that purpose shall be duly certified by the Auditor, within three months from the end of the financial year.

(5) The procedure to be adopted in auditing the accounts of different types of co-operative societies should be in the manner specified in the audit manual approved by Director of Co-operative Audit or guidelines, directions as may be issued, from time to time, by the



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Registrar, the National Bank for Agricultural and Rural Development or Reserve Bank of India, as the case may be, from time to time.

(5A) It shall be the duty of the Director of Co-operative Audit, in consultation with the Registrar to revise, amend or update audit manual in every five years, as may be prescribed.

(6) Notwithstanding anything contained in any other law for the time being in force, the Audit Certificate issued by the Director of Co-operative Audit, or by any officer authorized by him shall be valid for all purposes required to be filed before the State Government and non-Governmental authorities.

(7) The Director of Co-operative Audit shall be under the control of the Registrar of Co-operative Societies.

(8) The minimum qualification and experience of auditors for auditing accounts of the Co-operative society may be such, as may be prescribed.

(9) Every co-operative society shall cause to be audited by a team of auditors appointed by the Director of Co-operative Audit in accordance with the scheme approved and notified by the State Government. The composition, structure of the team, mode of conducting audit, mode of processing and preparing audit report shall be included in the scheme approved by the State Government.

(10) The financial accounts of all apex societies and all urban co-operative banks shall be audited by auditing firms, from among the panel approved by the Director of Co-operative Audit and the administrative matters and related accounts of assisted apex societies shall be audited by the departmental auditors and submit the audit reports to the Director of Co-operative Audit. If the audit discloses any misappropriation or fraud or defalcation of money or property or assets of the society, audit team shall prepare a special report and forward the same to the Director of Co-operative Audit and the Registrar. The Registrar himself, or the Director of Co-operative Audit in consultation with the Registrar, shall forward the special report to the Vigilance Officer appointed under section 68A for detailed inquiry.

(11) The audit report of the accounts of an apex co-operative society which includes the report on administrative matters, shall be laid by the Government before the Legislative Assembly, in the manner prescribed.

(12) It is the responsibility of the managing committee to convene general body meeting or special general body meeting in order to appoint auditors or auditing firms within the stipulated time from among the panel approved by the Director of Co-operative Audit, failing which, the members of the managing committee shall cease to hold their office. In such cases to avoid administrative stalemate, the Registrar may suo motu or on application from the Director of Co-operative Audit or from any person authorized in this behalf, appoint an Administrator or an administrative committee consisting of not more than three persons, who shall be from among the members of the society, one among them as convener, to manage the affairs of the society, for a period not exceeding six months as may be specified in the order:



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Provided that administrator or administrative committee shall arrange for the constitution of a new committee or for entering upon office of the new committee, as the case may be.

(12A) No auditor or auditing firms or team of auditors shall be entrusted with the audit of a co-operative society for more than two consecutive audits.

(13) The Government may issue notification, either prospectively or retrospectively, by publishing the same in the Gazette, to carry out the purposes of this section.

64. Scope of audit, powers of the Director of Co-operative Audit and procedure for audit.- (1) The audit shall include an examination of overdue debts, if any, the verification of the cash balance and securities and a valuation of assets and liabilities of the society concerned and such other audit matters, as may be prescribed.

(1A) In the case of co-operative societies whose accounts are prepared using a common software or any other software approved by the Registrar, the audit includes the audit of information system and evaluation of software as well as hardware.

(1B) If during the audit of information system and evaluation of software and hardware, any manipulation of records or manipulation in the working of the software or hardware is revealed, the auditor/auditors/audit firms shall inform the manipulations to the Director of Co-operative Audit and the Registrar.

(1C) The Registrar himself, or the Director of Co-operative Audit in consultation with the Registrar shall inform the manipulations in the system to the Police or Vigilance officer, as the case may be, for investigation.

(2) For the purpose of audit, the Director of Co-operative Audit or the person authorised by him under S.63 shall have the following powers, namely:-

(a) he shall, at all reasonable times, have access to all the books, accounts, documents, papers and all other relevant records, securities, cash and other properties belonging to, or in the custody or control of the society;

(b) he may summon any person in possession of or responsible for the custody of any such books, accounts, documents, papers, other records, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof or, where there is no working office for a society, at the office of the Director of Co-operative Audit or at the office of any of his subordinate officers, as maybe specified by him; and

(c) such other powers as may be prescribed.

(3) Every person who is or has been, at any time, an officer or employee of the society and every member and past member of the society, who is in possession of any information and records in regard to the transaction and working of the society, shall furnish such information in



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regard to the transactions and working of the society, as the director or the person authorised by the Government under sub-section (3) of S.63, may require.

(4) The financial statements and other statutory statements as required by auditors shall be prepared by the chief executive of the society within one month from the date of close of the financial year and submit it before managing committee and the fact shall be reported to the Director of Co-operative Audit or to the persons authorized by him in this behalf.

(4A) It shall be the duty of the managing committee of every society to ensure the accuracy of financial and other statutory statements. It is the responsibility of the committee to submit the above statements for audit within fifteen days from the date of receipt of the above statements before the auditor. Lapse on the part of managing committee in this regard will be considered as a disqualification to hold office and they shall cease to be a member of the committee as may be prescribed. In such cases to avoid administrative stalemate, the Registrar may suo motu or on application from the Director of Co-operative Audit or by any person authorized in this behalf, appoint an administrator or an administrative committee consisting of not more than three persons, who shall be from among the members of the society, one among them as convener, to manage the affairs of the society, for a period not exceeding six months as may be specified in the order:

Provided that administrator or administrative committee shall arrange for the constitution of a new committee, or for entering upon office of the new committee, as the case may be.

(4B) Within forty five days from the date of receipt of the audit report, the Director of Co-operative Audit shall issue an audit certificate to the concerned society with a copy of audit memorandum as may be prescribed.

(5) The auditor or team of auditors or auditing firms appointed as per section 63 shall complete the audit within ninety days from the date of receipt of the statements and submit audit report to the Director of Co-operative Audit or to the persons authorized by him in this behalf.

(5A) On completion of audit and before submission of audit report to the Director of Co-operative Audit, the auditor or audit team or audit firm, as the case may be, shall discuss the audit findings with the Managing Committee of the society concerned and get their reply in writing.

(6) The amount of fee or cost for the audit of accounts of society for each year shall be such, as may be fixed by the Director of Co-operative Audit, in accordance with the rules made in this behalf.

(7) The fee or cost shall be paid by the society concerned within thirty days of intimation thereof and in case of non-payment of the fee or cost within the period it shall be recoverable in the manner specified in S.79 or can be recovered from the account maintained in the financing bank by the society, through an order issued by the Registrar upon the request from the Director of Co-operative Audit.

(8) The procedure for payment of the fee or cost shall be such, as may be prescribed.



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(9) If the result of the audit held under this section discloses any defect in the working of the society, the Committee shall take steps to rectify the defects and irregularities pointed out in the audit report, if any, and place the audit report alongwith the action taken report before the general body meeting to be held every year and explain therein the said defects or the irregularities. The Committee shall continue to take steps for rectification of all the defects and the irregularities in the audit report and appraise the general body meetings every year till all the defects and the irregularities are rectified. The Committee shall send a report of action taken to the Director of Co-operative Audit and to the Registrar within fifteen days from the date of the general body meeting.

(9A) If the Director of Co-operative Audit or the person authorized by him to carry out the audit of a society is of the opinion that any person had attempted to destroy or to tamper with the records or document so as to evade legal action on the mischief committed in the society, he shall report the matter to his controlling officer for filing a complaint to the Police or the Vigilance Officer in consultation with the Registrar or the person authorized by him, as the case may be.

(10) If the result of the audit held under S.63 discloses any serious defect in the working of the society, the Director of Co-operative Audit or the person authorized by him shall communicate the same forthwith to the Registrar for immediate further action.

(11) The Director of Co-operative Audit may, by order in writing, direct the society or its officers to take such action, as may be specified in the order, within the time mentioned therein to rectify the defects disclosed in the audit, under intimation to the Registrar.

(12) Notwithstanding anything contained in this Act it shall be the duty of the committee of a society,-

(a) to request the Director of Co-operative Audit to get its accounts audited every year by remitting the required fee or cost for audit in advance or as determined by the Director of Co-operative Audit and to get its books, accounts, financial statements and all other statements required by the auditor for audit, written up and completed and to submit them for audit through its Chief Executive, to the Director of Co-operative Audit or officer authorized by him for the purpose of audit within the time limit stipulated in sub-section (4), before a request for audit is made to the Director of Co-operative Audit;

(b) To place the audit certificate in full before the general body or the representative general body and to read over to the general body or Representative General body of the defects mentioned in it and also to place the rectification reports of each defects before the general body or the Representative General body.

(c) To rectify all the defects mentioned in the audit certificate and to submit the rectification reports on the defects mentioned in the audit certificate, to the Director of Co-operative Audit and to the Registrar within two months of the receipt of the audit certificate.

(13) Notwithstanding anything contained in this Act or rules made thereunder or bye-laws of a Regional Co-operative Milk Producers' Union and its apex society, Annual Performance Audit in the Regional Co-



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operative Milk Producers Union and its apex society shall be conducted for every financial year, in the prescribed manner, by engaging persons from among the panel of experienced persons in dairy industry, recommended by the apex society and approved by the Functional Registrar of Dairy Co-operatives.

The Kerala Co-operative Societies Rules:

Rule 64B:

64B. Audit Report.- (1) The auditor shall submit an audit memorandum in the form specified by the Director of Co-operative Audit on the accounts examined by him and on the balance sheet and final accounts as on the date for the period up to which the accounts have been audited and shall state whether in his opinion and to the best of his information and according to the explanations given to him, the said accounts give all the information required by the Act and give a true and fair view.-

(i) in the case of the balance sheets of the state of society's affairs as at the end of the year or any other subsequent date to which the accounts are made up and examined by him; and

(ii) in the case of the profit and loss account of the profit or loss for the year or the period covered by the audit, as the case may be.

(2) The audit memorandum shall state:

(a) whether the Auditor had obtained all the information and explanation which to the best of his knowledge and belief were necessary for the purpose of his audit;

(b) whether in his opinion, proper books of accounts, as required by the Act, these rules and the bye-laws of the society have been kept and regularly maintained by the society so far as it appear from the examination of these books and

(c) whether the balance sheet and the final accounts examined by him are in agreement with the books of accounts and returns of the society.

(3) Where any of the matters referred to in sub-rule (2) are answered in the negative or with a qualification, the person who does the audit shall specify the reasons for the answers in the audit memorandum.

(4) The audit memorandum shall also contain schedules with full particulars of, -

(i) all transactions which appear to be contrary to the provisions of the Act, the rules or the bye-laws of the societies;

(ii) all sums which ought to have been, but have not been brought into account, by the society.

(iii) any material impropriety or irregularity in the expenditure or in the realisation of moneys due to the society;

(iv) any money or property belonging to the society which appears to the auditor to be bad or doubtful debt;

(v) an audit classification statement prepared in accordance with instructions issued by the Registrar from time to time; and

(vi) any other matters specified by the Registrar on this behalf.



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- (5) Within three months from the date of receipt of the audit report the Director of Co-operative Audit shall issue the audit certificate and a copy of the audit memorandum specified in sub-rule (1) duly signed by him. While communicating the audit memorandum, the Director of Co-operative Audit may modify or expunge any portion thereof which appears to him to be objectionable or not justified by facts.
- (6) The society shall publish or exhibit in the Notice Board of the society, -
- (i) the copy of audit certificate;
 - (ii) the statement showing the receipts and disbursements for the year;
 - (iii) the profit and loss account; and
 - (iv) the balance sheet in the manner specified by the Director of Co-operative Audit and shall also keep them open for inspection by any member of the society. The summary of the audit memorandum shall also be read out at the general body meeting of the society.
- (7) The Director of Co-operative Audit shall have powers to issue directions to the societies to prepare and submit any other statements and schedules and call for any details which are necessary for the conduct and completion of audit.
- (8) The Director of Co-operative Audit shall be an officer on deputation from the Indian Audit and Accounts Service not below the rank of Deputy Accountant General or an officer from Indian Administrative Service."

It can be seen from a perusal of the statutory framework that the assessee Co-operative Societies had virtually no control over the completion of the audit by the statutory auditors. We also note that there is nothing on record that would suggest that the delay occasioned by the statutory auditors in finalising the audit reports was in any way attributable to the conduct of the assessees in these appeals. We make this observation at this stage because we notice that, unlike the findings of the Assessing Authority and the First Appellate Authority, the observations of the Tribunal in the orders impugned before us are suggestive of such lethargy on the part of the assessees without there being any tangible material before the Tribunal based on which it could arrive at such a finding. We also



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find that, at any rate, the audit reports were made available before the Assessing Authority at the time of completion of the assessment, and hence, there was really no prejudice caused to the Department in the matter of finalisation of assessment.

11. The Appellate Tribunal has chosen to confirm the penalty against the assessee before us by relying on the decision of a Division Bench of this Court in **Peroorkkada Service Co-operative Bank Limited v. Income Tax Officer - [2020 114 Taxman.com. 18 (Kerala)]**, where a Division Bench of this Court sustained a penalty in almost similar circumstances by finding, as a matter of fact, that no reasonable cause had been shown by the assessee in that case for the delay occasioned in submitting the audit report. In our view, the factual situation that obtained in **Peroorkkada (supra)** was different and distinguishable from the facts in the appeals before us. In the present appeals, the Assessing Authority, at first instance, did not even look into the aspect of “reasonable cause” and proceeded to confirm the penalty on the assessee on the assumption that the penalty under Section 271B of the I.T. Act was automatic whenever there was a delay in submission of the audit report beyond the prescribed due date. The First Appellate Authority and the Appellate Tribunal sustained the penalty order on assumptions made that had no basis from facts that were available before them in the records. In our view, the assessee had demonstrated reasonable cause for the



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delay occasioned in filing the audit report before the Assessing Authority for more reasons than one. At the outset, we find that notwithstanding the peremptory phraseology used in Section 44AB of the I.T. Act with regard to furnishing of audit reports within the prescribed time limit, the assesseees in these appeals had furnished the audit reports before the completion of assessment and the assessment was completed by the Assessing Authority by placing reliance on the said audit reports. There was therefore no prejudice caused to the Department while completing the assessment against the appellants/assesseees. Secondly, there is no material on record to suggest that it was on account of any fault with the assesseees Societies that a delay was occasioned in the preparation of the final audit report. The statutory provisions under the Kerala Co-operative Societies Act and Rules noticed above would reveal that the auditors had time that extended to six months after expiry of the financial year in question to submit their audit report, and if they took more time than was allowed under the Statute, then the assesseees Societies had no option but to await the audit report, for, they had no manner of control over the preparation of those reports. Thirdly, the statutory provisions under the Kerala Co-operative Societies Act and Rules clearly provide for penal action against those Societies who do not maintain proper accounts and failed to get their accounts audited by the statutory auditors. There is no material on record that would suggest that any of the assessee Societies had been subjected to such



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penal proceedings, and hence, the Appellate Tribunal was not justified in assuming that some part of the delay in submitting the audit reports can be attributed to the assessee Societies. Fourthly, we find from a perusal of the CBDT Circular No.3/2009 dated 21.05.2009 issued in exercise of the powers under Section 139C of the I.T. Act that under certain circumstances, the Board has permitted a belated production of the audit reports by assessees such as the appellants before us, as and when called for by the Income Tax authorities. The said Circular would align with the Scheme of penalty under the Income Tax Act especially in the context of Sections 271B and 273B of the I.T. Act that deal with penalty for non-compliance with the provisions of Section 44AB of the I.T. Act. The Circular, in our view, suggests that a penalty need not be imposed on assessees if no prejudice is caused to the Department on account of any belated furnishing of an audit report. The Circular, being of a binding nature, insofar as the Department is concerned, the Assessing Authority, First Appellate Authority and the Appellate Tribunal ought to have taken due note of it while deciding on whether or not a penalty was called for in relation to the assessees before us.

12. The net result of our findings above would be that the appellants/assessees before us cannot be seen as persons who did not establish a reasonable cause for the belated filing of the audit reports before the Assessing Authority. The peremptory phraseology used in



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Section 273B of the I.T. Act therefore mandated that no penalty under Section 271B be imposed on them. For the same reason, and since reasonable cause was demonstrated by the assessees in the instant cases, the decision of the Division Bench of this Court in **Peroorkkada (supra)** would have no application to the case of the appellants before us. We therefore set aside the impugned orders of the Appellate Tribunal, to the extent it confirms the penalty under Section 271B of the I.T. Act on the appellants/assesseees, and allow these I.T. Appeals by answering the questions of law raised in favour of the assesseees and against the Revenue.

The I.T. Appeals are allowed.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
K.V. JAYAKUMAR
JUDGE

prp/



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APPENDIX OF I.T.A.NO.9/2023

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE ORDER UNDER SECTION 271 B OF THE INCOME TAX ACT, 1961 DATED 24-01-2022.

ANNEXURE B: TRUE COPY OF THE APPEAL PREFERRED BY THE SOCIETY BEFORE COMMISSIONER OF INCOME TAX APPEALS ON 24-02-2022.

ANNEXURE C: TRUE COPY OF THE WRITTEN SUBMITTED BY THE SOCIETY BEFORE NATIONAL FACELESS APPEAL CENTER DATED NIL.

ANNEXURE D: TRUE COPY OF THE ORDER U/S 250 OF INCOME TAX ACT PASSED BY COMMISSION OF INCOME TAX APPEALS DATED 18-11-2022.

ANNEXURE E: TRUE COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL COCHIN BENCH IN ITA NO. 30/COCH/2023 DATED 12-06-2023



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APPENDIX OF I.T.A.NO.10/2023

PETITIONER'S ANNEXURES:

Annexure A	TRUE COPY OF THE ORDER UNDER9 SECTION 271 B OF THE INCOME TAX ACT, 1961 DATED 24-01-2022
Annexure B	TRUE COPY OF THE APPEAL PREFERRED BY THE SOCIETY BEFORE COMMISSIONER OF INCOME TAX APPEALS ON 24-02-2022
Annexure C	TRUE COPY OF THE WRITTEN SUBMITTED BY THE SOCIETY BEFORE NATIONAL FACELESS APPEAL CENTER
Annexure D	TRUE COPY OF THE ORDER U/S 250 OF INCOME TAX ACT PASSED BY COMMISSION OF INCOME TAX APPEALS DATED 18-11-2022
Annexure E	TRUE COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL COCHIN BENCH IN ITA NO. 29/COCH/2023 DATED 12-06-2023



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APPENDIX OF I.T.A.NO.14/2023

PETITIONER'S ANNEXURES:

Annexure A	TRUE COPY OF THE ORDER UNDER SECTION 271 B OF THE INCOME TAX ACT, 1961 DATED 23-08-2021
Annexure B	TRUE COPY OF THE APPEAL PREFERRED BY THE SOCIETY BEFORE COMMISSIONER OF INCOME TAX APPEALS ON 23-09-2022
Annexure C	TRUE COPY OF THE ORDER U/S 250 OF INCOME TAX ACT PASSED BY COMMISSION OF INCOME TAX APPEALS DATED 06-12-2022
Annexure D	TRUE COPY OF THE APPEAL PREFERRED BEFORE THE INCOME TAX APPELLATE AUTHORITY
Annexure E	TRUE COPY OF THE WRITTEN SUBMISSION FILED BEFORE THE INCOME TAX APPELLATE AUTHORITY
Annexure F	TRUE COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL COCHIN BENCH IN ITA NO.31/COCH/2023 DATED 30-06-2023



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APPENDIX OF I.T.A.NO.25/2023

PETITIONER' S ANNEXURES :

Annexure-I	A TRUE COPY OF THE PENALTY ORDER NO.AADAT2149P/W-4/KLM/2018-19 DATED 29- 03-2019
Annexure-II	A TRUE COPY OF THE ORDER IN APPEAL NO.ITBA/NFAC/S/250/2022-23/ 1045310362(1) DATED 08-09-2022 ISSUED BY COMMISSIONER OF INCOME TAX (APPEALS), NFAC, DELHI
Annexure-III	CERTIFIED COPY OF THE ORDER DATED 28-04- 2023 IN ITA NO.951/COCH/2022 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
Annexure-IV	A TRUE COPY OF THE INTERIM ORDER DATED 23-08-2023 IN ITA NO.9 OF 2023
Annexure-V	A TRUE COPY OF THE INTERIM ORDER DATED 07-09-2023 IN ITA NO.14 OF 2023



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APPENDIX OF I.T.A.NO.35/2023

PETITIONER'S ANNEXURES:

- | | |
|--------------|---|
| Annexure I | A TRUE COPY OF THE PENALTY ORDER
NO.ITBA/PNL/F/271B/2021-22/1040532686(1)
DATED 10-03-2022 |
| Annexure II | A TRUE COPY OF THE ORDER IN APPEAL
NO.ITBA/NFAC/S/250/2022-23/
1049054810(1) DATED 24-01-2023 ISSUED BY
COMMISSIONER OF INCOME TAX (APPEALS) |
| Annexure III | CERTIFIED COPY OF THE ORDER DATED 05-06-
2023 IN ITA NO.105/COCH/2023 OF THE
INCOME TAX APPELLATE TRIBUNAL, COCHIN
BENCH, COCHIN |
| Annexure IV | A TRUE COPY OF THE INTERIM ORDER DATED
23-08-2023 IN ITA NO.9 OF 2023 |
| Annexure V | A TRUE COPY OF THE INTERIM ORDER DATED
07-09-2023 IN ITA NO.14 OF 2023 |

RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE