

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member and
Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. Nos. 397 & 398/KOL/ 2015
Assessment Years: 2008-2009 & 2009-2010**

**Assistant Commissioner of Income Tax,.....Appellant
Circle-1, Jalpaiguri,
C.R. Building, Ground Floor,
Race Course Para,
Naya Basti, Jalpaiguri-735 101**

-Vs.-

**The Jalpaiguri Central Cooperative Bank Limited,.....Respondent
Temple Street,
Jalpaiguri-735 101
[PAN: AAABT 2597 B]**

Appearances by:

*Shri Dinabandhu Naskar, Additional CIT(D.R.), for the Department
None, for the assessee*

Date of concluding the hearing : June 21, 2017

Date of pronouncing the order : June 21, 2017

O R D E R

Per Shri P.M. Jagtap, A.M.:

These two appeals preferred by the Revenue are directed against the order of Id. Commissioner of Income Tax (Appeals), Jalpaiguri dated 27.02.2015 passed for assessment years 2008-09 and 2009-10.

2. The relevant facts of the case giving rise to these appeals are that the assessments in the case of the assessee for both the years under consideration, i.e. A.Y. 2008-09 and 2009-10 were completed by the Assessing Officer under section 143(3) by taking the status of the assessee as a Cooperative Society. Subsequently it was noticed by the Assessing Officer that its status was mentioned by the assessee as "AOP" in the returns of income filed for both the years under consideration. He accordingly issued notices under section 154 and passed the rectification

orders dated 11.09.2014 changing the status of the assessee from the Cooperative Society to AOP.

3. Against the orders passed by the Assessing Officer under section 154, appeals were preferred by the assessee before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), it was submitted by the assessee that its status is a Cooperative Society but the same was mentioned wrongly in the returns of income for the years under consideration as AOP instead of a Cooperative Society. It was also pointed out by the assessee that its status was continuously taken as a Cooperative Society by the Income Tax Department in other years. After considering this submission made by the assessee, the Id. CIT(Appeals) decided the issue vide paragraph no. 4 of his impugned order as under:-

"It is seen that the assessee is treated as Cooperative Society by Income Tax Department in all other Ays. Assessee has been issued banking license by RBI in his status as Cooperative Society. The moment the assessee ceases to be a Cooperative Society, the license will lapse. It is purely a mistake while preparing the return of income that the status is mentioned as AOP. The AO is directed to call for the details from the assessee about his status and treat the assessee as per the status mentioned in the documents. The appeal of the assessee is partly allowed".

Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred these appeals before the Tribunal.

4. At the time of hearing before us, none has appeared on behalf of the assessee. These appeals of the Revenue are, therefore, being disposed of *ex-parte qua* the respondent-assessee after hearing the arguments of the Id. D.R. and perusing the relevant material available on record. It is observed that the Id. CIT(Appeals) vide his impugned order has directed the Assessing Officer to verify the claim of the assessee regarding its status being a Cooperative Society by calling for the relevant details and documents from the assessee and verifying the same. The Id. CIT(Appeals) thus has actually not decided the issue relating to the

determination of the status of the assessee vide his impugned order and directed the Assessing Officer to decide the same after verifying the relevant details and documentary evidence. In our opinion, the Revenue thus cannot be said to have any real grievance arising from the impugned order of the Id. CIT(Appeals) and even the Id. D.R. has fairly and frankly admitted the same, we, therefore, find no infirmity in the impugned order of the Id. CIT(Appeals) and upholding the same, we dismiss these appeals filed by the Revenue.

5. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open Court on June 21, 2017.

Sd/- (S.S. Viswanethra Ravi) Judicial Member	Sd/- (P.M. Jagtap) Accountant Member
---	---

Kolkata, the 21st day of June, 2017

- Copies to :*
- (1) **Assistant Commissioner of Income Tax,
Circle-1, Jalpaiguri,
C.R. Building, Ground Floor,
Race Course Para,
Naya Basti, Jalpaiguri-735 101**
 - (2) **The Jalpaiguri Central Cooperative Bank Limited,
Temple Street,
Jalpaiguri-735 101**
 - (3) **Commissioner of Income Tax (Appeals), Jalpaiguri;**
 - (4) **Commissioner of Income Tax ,Kolkata**
 - (5) **The Departmental Representative**
 - (6) **Guard File**

By order

*Senior Private Secretary,
Head of Office/DDO
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.