

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA Nos.766 & 767/KOL/2023
Assessment Years: 2016-17 & 2017-18
&
ITA No. 768/Kol/2023
Assessment Year: 2017-18**

Darjeeling District Central Cooperative Bank Ltd. Rishi Road (Sahid D. B. Giri Road), Kalimpong, Darjeeling, West Bengal-734301. (PAN: AAALD0261C)	Vs	Assistant Commissioner of Income-tax (OSD)(TDS), Ward-5(3), Darjeeling
(Appellant)		(Respondent)

Present for:

Appellant by : Shri N. C. Mondal, CA

Respondent by : Shri Sailen Samadder, Addl. CIT, Sr. DR

Date of Hearing : 05.06.2024

Date of Pronouncement : 26.06.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

These three appeals having filed by the assessee are against the separate orders of Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as “the Ld. CIT(A)” passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) dated 10.06.2023, details of which are as under:

Sl. No.	ITA No. & Asstt. Year	Date of order of the Ld. CIT(A)	Section or the Act under which the order of the AO was passed & the Date of the order
1.	766/Kol/2023, AY 2016-17	10.06.2023	201(1)/201(1A)16.03.2018
2.	767/Kol/2023, AY 2017-18	10.06.2023	143(3) 24.12.2019
3.	768/Kol/2023, AY 2017-18	10.06.2023	201(1)/201(1A)16.03.2018

2. Grounds of appeal raised by the assessee in ITA No. 766/Kol/2023 are reproduced as under:

“1. THAT on facts of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Income Tax Department was wrong and not justified by confirming the order passed by the Ld. Assistant Commissioner of Income Tax(OSD)(TDS), Ward-5(3), Darjeeling on 16-03-2018 u/s.201(1)/201(1A) of the Income Tax Act, 1961 demanding Rs.26,24,748/- for non deduction of tax at source under section 194A and Rs.77,12,381/- for interest u/s.201(1A) of the Income Tax Act, 1961 though no tax was deductible in terms of exemption provided u/s.194A(3)(v) of the Income Tax Act, 1961 even after amendment in said section w.e.f. 01.06.2015.

2. THAT on facts of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Income Tax Department was wrong and not justified by confirming the demand of Rs.77,12,381/- for interest u/s.201(1A) of the Act, which was wrongly calculated on the amount of interest paid without TDS instead of amount of TDS default and as a result wrongly and illegally abnormally higher demand was raised.

3. THAT on facts of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Income Tax Department was wrong and not justified by dismissing the appeal based only on explanation given in paragraph 42.5 of Circular No.19 of 2015 dated November, 2015 and by not considering and ignoring clear instruction given in Paragraph-42.7 of said Circular No.19 of 2015 that the existing exemption provided under section 194A(3)(v) of the Income-tax Act from deduction of tax from interest paid by a co-operative society to another co-operative society shall continue to apply to the co-operative bank and, therefore, a co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operative society.

4. THAT on facts of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Income Tax Department was wrong and not justified without considering and completely ignoring that all the payees to whom interests were paid, are co-operative societies and no tax at source was deductible even after amendment in section 194A(3)(v) of the Income Tax Act, 1961 w.e.f. 01.06.2015.

5. That on the facts of the case, the ld. AO(TDS) has erred in law by initiating proceedings under section 201(1) and 201(1A) of the I.T.Act,1961 without satisfying himself as to whether the deductee/payee assessee has failed to pay taxes directly, which has been held as foundational and jurisdictional fact and only after finding that deductee/payee assessee has failed to pay tax directly, deductor i.e. the appellant can be deemed to be an assessee in default in respect of such tax and the very initiation of proceedings would be without jurisdiction and all subsequent action would be without jurisdiction and would be null and void.

6. *THAT your petitioner reserves the right to prefer further ground(s) and/or delete/modify ground(s)/arguments, submit documents before the final disposal of this appeal.”*

3. Grounds of appeal raised by the assessee in ITA No. 767/Kol/2023 are reproduced as under:

“1. THAT on facts of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Income Tax Department was wrong and not justified by not considering the fact of the case and by confirming the addition of Rs.74,50,100/- made by the Ld. Assessing Officer under section 40(a)(ia) of the Income Tax Act, 1961 for non deduction of tax at source under section 194A of the Income Tax Act, 1961 on the amount of Rs.2,48,33,642/- though no tax was deductible in terms of exemption provided u/s.194A(3)(v) of the Income Tax Act, 1961 even after amendment of said section w.e.f. 01.06.2015.

2. THAT on facts of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Income Tax Department was wrong and not justified by not considering and ignoring that all the payees to whom interests were paid, are co-operative societies and no tax was deductible even after amendment in section 194A(3)(v) of the Income Tax Act, 1961 w.e.f. 01.06.2015.

3. THAT on facts of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Income Tax Department was wrong and not justified by not considering and ignoring clear instruction given in Paragraph-42.7 of Circular No.19 of 2015 that the existing exemption provided under section 194A(3)(v) of the Income-tax Act from deduction of tax from interest paid by a co-operative society to another co-operative society shall continue to apply to the co-operative bank and, therefore, a co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operative society.

4. THAT your petitioner reserves the right to prefer further ground(s) and/or delete/modify ground(s)/arguments, submit documents before the final disposal of this appeal.”

4. Grounds of appeal raised by the assessee in ITA No. 768/Kol/2023 are reproduced as under:

“1. THAT on facts of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Income Tax Department was wrong and not justified by confirming the order passed by the Ld. Assistant Commissioner of Income Tax(OSD)(TDS), Ward-5(3), Darjeeling on 16-03-2018 u/s.201(1)/201(1A) of the Income Tax Act, 1961 demanding Rs.24,83,364/- for non deduction of tax at source under section 194A and Rs.61,43,215/- for interest u/s.201(1A) of the Income Tax Act, 1961 though no tax was deductible in terms of exemption provided u/s.194A(3)(v) of the Income Tax Act, 1961 even after amendment in said section w.e.f. 01.06.2015.

2. THAT on facts of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Income Tax Department was wrong and not justified by confirming the demand of Rs.61,43,215/- for interest u/s.201(1A) of the Act, which was

wrongly calculated on the amount of interest paid without TDS instead of amount of TDS default and as a result wrongly and illegally abnormally higher demand was raised.

3. THAT on facts of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Income Tax Department was wrong and not justified by dismissing the appeal based only on explanation given in paragraph 42.5 of Circular No.19 of 2015 dated November, 2015 and by not considering and ignoring clear instruction given in Paragraph-42.7 of said Circular No.19 of 2015 that the existing exemption provided under section 194A(3)(v) of the Income-tax Act from deduction of tax from interest paid by a co-operative society to another co-operative society shall continue to apply to the co-operative bank and, therefore, a co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operative society.

4. THAT on facts of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Income Tax Department was wrong and not justified without considering and completely ignoring that all the payees to whom interests were paid, are co-operative societies and no tax at source was deductible even after amendment in section 194A(3)(v) of the Income Tax Act, 1961 w.e.f. 01.06.2015.

5. That on the facts of the case, the ld. AO(TDS) has erred in law by initiating proceedings under section 201(1) and 201(A) of the I.T.Act,1961 without satisfying himself as to whether the deductee/payee assessee has failed to pay taxes directly, which has been held as foundational and jurisdictional fact and only after finding that deductee/payee assessee has failed to pay tax directly, deductor i.e. the appellant can be deemed to be an assessee in default in respect of such tax and the very initiation of proceedings would be without jurisdiction and all subsequent action would be without jurisdiction and would be null and void.

6. THAT your petitioner reserves the right to prefer further ground(s) and/or delete/modify ground(s)/arguments, submit documents before the final disposal of this appeal.”

5. Since the issues in ITA Nos. 768 and 766/Kol/2023 are similar and the issue in ITA No. 767/Kol/2023 arises out of the disallowance confirmed relating to ITA No. 768/Kol/2023, therefore, all the appeals are being decided vide this common order for the sake of brevity and convenience. The assessee has filed a common written submission for all the three appeals on 12.09.2023, which has been considered along with the rival submissions made before us.

6. Brief facts as mentioned in the written submissions filed are as under:

“The appellant, a Co-operative Bank registered under the West Bengal Co-operative Societies Act, 1940 is a district central co-operative bank operating through 10 branches in the district of Darjeeling and Kalimpong and engage in business of banking and takes deposits from its members and customers and also provide loans, advances and other banking services to small farmers and traders in the districts of Darjeeling and Kalimpong through other small primary co-operative societies. The appellant is holding license from Reserve Bank of India. Under section 2(19) of the Income Tax Act, 1961 (hereinafter referred to as the Act) the status of the appellant is a Co-operative Society and always assessed as Association of Person (AOP) (Co-operative society). An inspection/spot verification was carried on at the Head Office of the appellant situated at Rishi Road, Kalimpong on 23/10/2017 for verification of matters related to compliance with TDS/TCS provisions. Thereafter, the appellant Co-operative Bank was asked to furnish list of members, deposits made by them and interest paid/credited thereon. In compliance of above notice, the appellant Bank furnished soft copy of the detailed list in a computer disk. From the said list it was clearly disclosed that all members are either Primary Co-operative Societies/other co-operative societies registered under West Bengal Co-operative Societies Act. Thereafter, a show cause notice dated 09.02.2018 was issued to the appellant seeking explanation as to why proceedings as per Income Tax Act, 1961 should not be initiated for failure to deduct tax at source on interest paid/credited above Rs.10,000/-, on time deposits, to its members. In response to Show Cause Notice, it was submitted that the appellant was not required to make TDS on interest paid to other co-operative societies u/s.194A(3)(v) of the Act and a written reply submitted on 07.03.2018 but the Ld. A.O. rejected the written reply of the appellant and arbitrarily and illegally declared the appellant as assessee in default and orders were passed on 16/03/2018 raising demand of-Rs.26,24,748/- u/s.201(1) and Rs.77,12,381/- for interest u/s.201(LA) for the A.Y. 2016-17 and Rs. 24,83,365/- u/s.201(1) and Rs.61,43,215/- for interest u/s.201(LA) of the Act for the A.Y. 2017-18. The said order was subsequently rectified u/s.154 of the Act on 30-03-2018 for both the years reducing interest amount to Rs.7,84,206/- u/s. 201(LA) for A.Y. 2016-17 and Rs.4,50,672/- u/s.201 (LA) for A.Y. 2017-18 of the Act keeping intact the default amount Rs.26,24,748/- and Rs.24,83,365/- u/s.201(1) of the Act. Even normal period of 30 days for paying the amount was also not allowed instead 7 days time was allowed after obtaining approval from Additional Commissioner of Income Tax and the amount was recovered by adopting coercive method of attaching appellant's bank account. Penalty proceedings u/s.271C of the Act was also initiated for both the years. Assessment for the A.Y. 2017-18 u/s.143(3) of the Act was completed 24-12-2019. The same issue again cropped up during the course of assessment and interest paid to other co-operative societies Rs. 74,50,100/- being 30% of interest paid Rs.2,48,33,642/- was disallowed u/s. 40(a)(ia) of the Act for non-deduction of TDS u/s. 194A of the Act. In response to show cause notice, the appellant again reiterated that interest paid by a co-operative society to another co-operative society is exempt from TDS u/s. 194A of the Act and objected the proposed addition. But again submission of the appellant was rejected.”

7. Being aggrieved, the assessee preferred the three appeals before the Tribunal.

8. The only issue in respect of ITA Nos. 768 & 766/Kol/2023 is whether interest paid by a co-operative bank on time deposits to a co-operative society, which is also a member of the State Co-operative Bank, is liable to be subjected to TDS u/s. 194A of the Act and/or whether the exclusive provisions mentioned in clause (v) of sec. 194A(3) of the Act are applicable to the Cooperative Bank when interest is paid to a co-operative society which is also a member of the State Cooperative Bank. It is stated that both the lower authorities misunderstood the provisions of section 194A(3)(v) of the Act and arbitrarily and illegally considered that if payee cooperative society is a member of the cooperative bank paying the interest, relief granted under clause (v) of section 194A(3) is not applicable to the said cooperative bank. It is stated that the Finance Act, 2015 has made an amendment in clause (v) of sub-section (3) of section 194A with effect from 01.06.2015. Prior to the said amendment, the relevant portion of section 194A is reproduced below:

"Interest other than "Interest on Securities"

194A. (1) Any person, not being an individual or Hindu Undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode whichever is earlier, deduct Income tax thereon at the rates in force.

Provided that an individual or Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limit specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such interest credited or paid, shall be liable to deduct income tax under this section.

Explanation- For the purpose of this section, where any income by way of interest as aforesaid is credited to any account, whether called interest payable account or "Suspense Account" or by any other name, in the books of account of the person liable to pay such income to the account of the payee and the provisions of this section shall apply accordingly.

(2) [Omitted by the Finance Act, 1992, w.e.f. 1-6-1992]

(3) The provision of sub-section (1) shall not apply- "

(i)

(ii)

..

(v) To such income credited or paid by a co-operative society to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society;

"Explanation-For the purpose of this clause "co-operative bank " shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);"

Finance Act, 2015 made amendment in clause (v) of sub-section (3) of section 194A and the .amended clause (v) is reproduced below.

"(v) To such income credited or paid by a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society;

Explanation-For the purpose of this clause 'cooperative bank' shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949)".

9. It is submitted that prior to the aforesaid amendment in clause (v), the appellant being a cooperative society was not required to deduct income tax on interest on deposits paid to any member thereof irrespective of the fact whether the member is a cooperative society or individual or any other person. And from the submission, it is seen that the words "other than cooperative bank" is inserted in the first part and amended clause (v) above and there is no change in the said exemption clause. Further, submission is reproduced as under:

"It appears that confusion has arisen after insertion of words "other than a co-operative bank" in the first part of the amended clause (v) of section 194A(3). A co-operative bank has been excluded from said exemption provision in the first part. However, such exclusion is only where interest is credited or paid by a co-operative bank to a member thereof. Though member has not been defined for the purpose of said clause (v) of section 194A(3) of the Act, but the intention of the amendment is to exclude interest paid by a co-operative bank to its individual members but not to any co-operative society which may or may not be a member and that is why, in the second part of the amended clause (v), unlike the first part, does not inserted the words "other than a co-operative bank" when interest is credited or paid to any other co-operative society. The second part of the amended clause is in respect of interest credited or paid by a co-operative society including a co-operative bank to any other co-operative society which may or may not be a member of the co-operative bank/ society paying the interest. In reply to the show cause notice the appellant bank submitted its written submission dated 07.03.2018 clearly explaining that no TDS is required to be deducted on interest paid/credited by any co-operative society which also includes co-operative bank to any other co-operative society irrespective of

whether the payee co-operative society is a member or non-member as per exemption provided in "section 194A(3)(v) of the Income Tax Act, 1961. It was also brought to the notice of both the Ld. AO (TDS) and the Ld. CIT(A)-NFAC that the provisions of the Finance Act, 2015 were explained in circular No. 19 of 2015 dated November 27, 2015 issued by the Central Board of Direct Taxes to clear any confusion. The reason why a cooperative bank was excluded in the first part of clause (v) was duly explained in the said circular under paragraph 42.1 to 42.5."

10. The assessee has reproduced para 42 of Circular 19/2015 dated 27.11.2015, sub paras 42.5 to 42.7 are reproduced as under:

"42.5 In view of this, the provisions of the section 194A(3)(v) of the Income-tax Act have been amended so as to expressly provide that the exemption provided from deduction of tax from payment of interest to members by a co-operative society under section 194A(3)(v) of the Income-tax Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members. As this amendment is effective from the prospective date of 1st June, 2015, the co-operative bank shall be required to deduct tax from the payment of interest on time deposits of its members, on or after the 1st June, 2015. Hence, a cooperative bank was not required to deduct tax from the payment of interest on time deposits of its members paid or credited before 1st June, 2015.

42.6 However, the existing exemption provided under section 194A(3)(vii)(a) of the Income-tax Act to primary agricultural credit society or a primary credit society or a cooperative land mortgage bank or a co-operative land development bank from deduction of tax in respect of interest paid on deposit shall continue to apply. Therefore, these cooperative credit societies/banks referred to in said clause (vii)(a) of section 194A(3) of the Income-tax Act shall not be required to deduct tax on interest payment to depositors even after the said amendment.

42.7 Further, the existing exemption provided under section (3)(v) of the Income-tax Act from deduction of tax from interest paid by a co-operative society to another co-operative society shall continue to apply to the co-operative bank and, therefore, a co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operative society."

[emphasis supplied]

11. It is further submitted that both the Ld. Authorities below in spite of the said clear explanation given in paragraph 42.7 in Circular No. 19 of 2015 dated November 27, 2015, illegally and arbitrarily placed reliance on the first part of section 194A(3)(v) and Para 42.5 of the said circular and have not uttered a word regarding second part of amended section 194A(3)(v) and clause 42.7 of Circular 19/2015 dated 27.11.2015 and deemed the assessee as an assessee in default for an

amount of Rs.26,24,748/- u/s. 201(1) and Rs.77,12,381/- u/s.201(1A) for F.Y. 2015-16 corresponding to A.Y. 2016-17 and Rs. 24,83,365/- u/s.201(1) and Rs. 61,43,215/- u/s.201(1A) for F.Y. 2016-17 corresponding to A.Y. 2017-18. Both the Ld. Authorities below arbitrarily and illegally ignored the clear instruction given in Para 42.7. The Ld. AO (TDS) accepted that all payees to whom interest payment above Rs.10,000/- was made, are co-operative societies and they are also members of the appellant co-operative bank. The Ld. AO failed to appreciate that since all members are also primary co-operative society, provisions in the first part of clause (v) of section 194A(3) and Para 42.5 of the said circular is not applicable in case of the assessee co-operative bank and the appellant co-operative bank is covered by the second part of clause (v) of section 194A(3) and Para 42.7 of the said explanatory circular.

12. It is further stated that it may not be irrelevant to mention here that in most of the cases the exemption/relief granted to Co-operative Societies under different sections of Income Tax, in particular section 80P are allowed only if those transactions are done with members only. But the Ld. AO (TDS), W-5(3), Darjeeling as well as the Ld. CIT(A)-NFAC failed to appreciate that explanation in Para 42.7 in Circular No. 19 of 2015 dated November 27, 2015 was given after taking into consideration the explanation in Para 42.5 and also to avoid any confusion regarding the intent of the legislation. The object of amendment was not directed to place a member co-operative society in less privileged situation than a non-member co-operative society and to take away the exemption/relief granted u/s.194A(3)(v) to a member co-operative society and a co-operative bank which is also a co-operative society. Thus, the assessee submits that the Ld. A.O. has also erred in law by declaring the assessee, an assessee in default u/s. 201(1) of the Act.

13. Explanation to section 191 of the Income Tax Act, 1961 relied upon by the assessee is stated as under:

"For the purpose of removal of doubts, it is hereby declare that if any person including the principal officer of a company-

(a) Who is required to deduct any sum in accordance with the provisions of this Act; or

(b) Referred to in sub-section (1A) of section 192, being an employer,

Does not deduct, or after so deduction fails to pay, or does not pay, the whole or any part of the tax , as required by or under the Act, and where the assessee has also fails to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default within the meaning of sub-section (1) of section 201, in respect of such tax."

14. Further submissions have been made regarding the non-applicability of provisions of section 201(1) and the assessee has prayed as under:

"i) treat the appellant not being an assessee in default u/s.201(1)/201(1A) of the Income Tax Act, 1961; and delete the demand of Rs.26,24,748/- u/s.201(1) and Rs.77,12,381/- for interest u/s.201(1A) for the A.Y. 2016-17 and Rs. 24,83,365/- u/s.201(1) and Rs.61,43,215/- for interest u/s. 201(1A) of the Income Tax Act, 1961 for the A.Y. 2017-18;

ii) delete the addition of Rs.74,50,100/- u/s.40(a)(ia) of the Income Tax Act 1961 as the appellant was not require to make TDS u/s.194A of the Income Tax Act 1961; and

iii) pass such order or orders as your Honours may deem fit and proper to restore justice."

15. We have heard the rival submissions and also gone through the orders of the AO and the Ld. CIT(A). The Ld. AO worked out a sum of Rs.61,43,215/- as interest u/s. 201(1A) (incorrectly mentioned as Rs.59,69,483/- in the body of the order for AY 2017-18) and a sum of Rs.77,12,381/- (incorrectly mentioned as Rs.59,69,483/- in the body of the order for AY 2016-17) as interest u/s. 201(1)(1A) payable by the assessee. Since the TDS as required was not deducted in the order u/s. 143(3) the interest amount of Rs.74,50,100/- being 30% of the amount on which the tax was deductible but had not been deducted was not

allowed in the computation of income u/s. 40(a)(ia) of the Act out of the total interest payment of Rs.2,48,33,653/-.

16. The Ld. AR submitted in the course of the hearing that the interest paid by a cooperative bank to another cooperative society being a member was exempted from the purview of TDS but due to amendment in the Act, the interest paid by cooperative society to its members was exempted w.e.f. 01.06.2015. However, cooperative bank was excluded and interest paid by a cooperative society to another cooperative society was exempted. There was a survey on 23.10.2017 it was an inspection/spot verification carried out at the head office at Rishi Road, PO & Dist. Kalimpong-743301 on the basis of which the AO worked out the interest paid/credited to its members cooperative bank branch wise. There was a clarification issued by the CBDT in clause 42(5), an extract from which has been reproduced above and it is submitted that para 42.7 was applicable to the assessee as all the interest was paid to cooperative societies. The Ld. DR relied upon the decision in the case of ITO Vs. The Ludhiana Central Cooperative Bank Ltd. ITA Nos. 798 to 801/Chd/2016, AY 2012-13 dated 28.11.2016 and submitted that since all these are time deposits, therefore, the assessee was liable to deduct tax at source.

17. We have gone through the rival submissions and also the contents of circular 19/2015, para 42.7 of which is reproduced once again for the sake of clarity as under:

“42.7 Further, the existing exemption provided under section (3)(v) of the Income-tax Act from deduction of tax from interest paid by a co-operative society to another co-operative society shall continue to apply to the co-operative bank and, therefore, a co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operative society.”

18. Therefore, since the interest was paid by the assessee to its members being cooperative societies so, by virtue of para 42.7 the

assessee was not liable to deduct any TDS on the interest paid to its members. Hence, the grounds of appeal are allowed as in the decision cited by the Ld. DR, the Hon'ble Bench have not considered para 42.7 of the circular 19 of 2015 but have only restricted the decision to para 42.5 thereof. Hence, as the assessee being a cooperative bank was not required to deduct tax on the payment of interest on time deposits to the depositor being a cooperative society, the order of the Ld. CIT(A) is reversed and the appeal of the assessee is allowed. Similarly for AY 2016-17 as well the appeal is allowed.

19. As regards the appeal for AY 2017-18 against the order u/s. 143(3) of the Act, since the assessee was not liable to deduct TDS from tax paid to its members, therefore, there does not arise any applicability of provisions of section 40(a)(ia) of the Act and the addition of Rs.74,50,100/- made by the AO and which has been confirmed by the Ld. CIT(A) is hereby also deleted.

20. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 26th June, 2024.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Rakesh Mishra)
Accountant Member

Dated: 26th June, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 1. The Assessee
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. The CIT,
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata