

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1725/Mum./2023

(Assessment Year : 2016-17)

ITA no.1726/Mum./2023

(Assessment Year : 2017-18)

ITA no.1727/Mum./2023

(Assessment Year : 2018-19)

Shri Renukamata Multi-State Co-operative
Urban Credit Society Ltd., 335/2AB
Behind Pushpak Hotel, Pipe Line Road
Savedi, Ahmednagar 414 003
PAN – AADAS7782D

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-4(4)(1), Central Range-4, Mumbai

..... Respondent

ITA no.2076/Mum./2023

(Assessment Year : 2016-17)

ITA no.2077/Mum./2023

(Assessment Year : 2017-18)

ITA no.2078/Mum./2023

(Assessment Year : 2018-19)

Jt. Commissioner of Income Tax (OSD)
Central Circle-4(4), Mumbai

..... Appellant

v/s

Shri Renukamata Multi-State Co-operative
Urban Credit Society Ltd., 335/2AB
Behind Pushpak Hotel, Pipe Line Road
Savedi, Ahmednagar 414 003
PAN – AADAS7782D

..... Respondent

Assessee by : Shri Dharmendra Kansara

Revenue by : Ms. Mahita Nair

Date of Hearing -21/06/2024

Date of Order -30/07/2024

ORDER

PER BENCH

The present cross-appeals have been filed challenging the separate impugned orders of even date 30/03/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-52, Mumbai, [*learned CIT(A)*], for the assessment years 2016-17, 2017-18 and 2018-19.

2. Since these appeals pertain to the same assessee and involve similar issues that arise out of a similar factual matrix, therefore, these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the cross-appeals for the assessment year 2016-17 is taken up as a lead case and the decision rendered therein shall apply *mutatis mutandis* to the cross-appeals for the assessment years 2017-18 and 2018-19.

ITA no.1725/Mum./2023 (Assessee's appeal)
ITA no.2076/Mum./2023 (Revenue's appeal)
Assessment Year: 2016-17

3. In its appeal for the assessment year 2016-17, the assessee has raised the following grounds:-

"The following grounds of appeal are independent of, and without prejudice to one another-

1. It is submitted that in the facts and the circumstances of the case, and in law, the approval granted under section 153D by the competent authority is mechanical and without application of mind.

2 It is submitted that in the facts and the circumstances of the case, and in law, the Assessing Officer erred in issuing a notice dated 27.12.2019 directing the appellants to get the accounts audited under section 142(2A) at the fag end

of the assessment proceedings which were getting barred by limitation on 31.12.2019 and without disposing of the objections raised by the appellants. Thus, the aforesaid direction of the Assessing Officer to get the accounts audited under section 142(2A) is nothing but mere tactics to extend the period of limitation which the Courts have held as bad in law.

3. Addition under section 68 of the Act for aggregate cash deposits and credit transactions but excluding the remote deposits.

3.1. The CIT(A) erred in sustaining the addition under section 68 of the Act at Rs 4,21,34,504, estimated at the rate of 0.15 per cent of Rs 2,808.96 crores being the aggregate cash deposits and credit transactions but excluding the remote deposits of all the account holders in the appellant-society against the addition of Rs 8,488.80 crores made by the Assessing Officer.

3.2. The CIT(A) erred in treating the appellants as facilitator of alleged accommodation entries given by the deposit holders relying on the alleged discrepancies observed by the Assessing Officer and special auditor in KYC documentation maintained by the appellant-society, without bringing any documentary evidences on record to support such allegation and entirely on surmises, suspicion and conjectures.

3.3. The impugned action of the CIT(A) in sustaining the addition on estimation basis is erroneous inasmuch as, the same is not in accordance with the provisions of section 68 of the Act.

4. Addition under section 68 of the Act for aggregate demand draft/ at par cheque issued by the appellant-society.

4.1. The CIT(A) erred in sustaining the addition under section 68 of the Act at Rs 47,96,398, estimated at the rate of 0.10 per cent of Rs 479.63 crores being the aggregate demand draft/ at par cheques issued by the appellant-society on receipt of cash from the account holders against the addition of Rs 479.63 crores made by the Assessing Officer.

4.2. The CIT(A) erred in treating the appellants as facilitator of alleged accommodation entries given by the deposit holders relying on the alleged discrepancies observed by the Assessing Officer and special auditor in KYC documentation maintained by the appellant-society, without bringing any documentary evidences on record to support such allegation and entirely on surmises, suspicion and conjectures.

4.3. The impugned action of the CIT(A) in sustaining the addition on estimation basis is erroneous inasmuch as, the same is not in accordance with the provisions of section 68 of the Act.

5. Disallowance of provision of standard asset Rs 50,00,000

5.1. The CIT(A) erred in sustaining the disallowance made by the Assessing Officer of provision of standard assets of Rs 50,00,000.

5.2. It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of provision of standard assets

without appreciating the facts of the case and hence, pray that the impugned disallowance of Rs 50,00,000 ought to be deleted.

6. Disallowance of prior period expenses Rs 1,10,14,122

6.1. The CIT(A) erred in sustaining disallowance made by the Assessing Officer of prior period expenses of Rs 1,10,14,122.

6.2. It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of prior period expenses without appreciating the facts of the case and hence, pray that impugned disallowance of Rs 1,10,14,122 is bad in law and ought to be deleted.

7. Disallowance under section 40A(3) of Rs 1,39,81,267

7.1. The CIT(A) erred in sustaining the disallowance made by the Assessing Officer under section 40A(3) aggregating Rs 1,39,81,267 being the rent expenses incurred during the year under reference.

7.2. It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of rent expenses under section 40A(3) without appreciating the facts of the case and hence, pray that impugned disallowance of Rs 1,39,81,267 is bad in law and ought to be deleted.

8. Disallowance of deduction under section 80P

8.1. The CIT(A) erred in sustaining the disallowance made by the Assessing Officer of deduction under section 80P claimed by the appellants.

8.2. It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of deduction of under section 80P without appreciating the facts of the case and hence, pray that impugned disallowance is bad in law and ought to be deleted.

The appellants crave leave to add to, alter or amend the aforestated grounds of appeal."

4. While the Revenue has raised the following grounds in its appeal for the assessment year 2016-17:-

"1. On the facts and in circumstances of the case, the Ld.CIT(A) erred in deleting the addition of Rs. 8488,80,03,877/- made by the Assessing Officer u/s 68 of the Income tax Act, 1961 on account of sum credited in the books of account as unexplained credit."

2. On the facts and in circumstances of the case, the Ld.CIT(A) erred in deleting the addition of Rs.479,63,98,048/- made by the Assessing Officer u/s 68 of the Income tax Act, 1961 on account of cash credited in the books of account for issue of at par cheque/DD, as unexplained credit."

3. The appellant craves to leave, to add, to amend and/ or to alter any of the ground of appeal, if need be."

5. During the hearing, no material was placed on record in support of ground no.1 raised in assessee's appeal. Accordingly, the same is dismissed.

6. In ground no.2, raised in assessee's appeal, the assessee has challenged the direction of the Assessing Officer ("AO") to get the accounts audited under section 142(2A) of the Act at the fag end of the assessment proceedings. From the perusal of the show cause notice dated 23/12/2019 issued by the AO for reference of the assessee's case for Special Audit under section 142(2A) of the Act, we find that since during the search and survey action on the assessee, large scale operations of the assessee in multiple cities, involving 320 different accounts in the nationalized/co-operative banks, for seven years were found, the AO considered it appropriate that the accounts of the assessee for the assessment years 2012-13 to 2018-19 be audited as provided in section 142(2A) of the Act. In response to the aforesaid show cause notice, we find that the assessee vide its reply dated 24/12/2019 though agreed that the examination of money trail is a complex investigation, however submitted that there are no complexities in its accounts which will require Special Audit. The assessee further submitted that it has provided various details to the Department during the ongoing assessment proceedings and has been fully co-operating with the Department. Accordingly, vide its reply the assessee prayed that no Special Auditor should be appointed. We find that after taking note of the assessee's submission, the AO passed the necessary directions on 27/12/2019 for audit of the accounts of the assessee under section 142(2A) of the Act. From the careful perusal of the aforesaid documents, forming part of

the paper book, we find no merits in the submission of the assessee that the direction to get the accounts audited under section 142(2A) of the Act is mere tactics to extend the period of limitation and we find the same to be necessary due to multiplicity of transactions and complexities involved in assessee's accounts. Accordingly, ground no.2 raised in assessee's appeal is dismissed.

7. Since the issue arising in grounds no. 3-4 raised in assessee's appeal, and ground no. 1-2 raised in Revenue's appeal pertains to addition under section 68 of the Act on account of cash deposits and credit transactions, therefore, these grounds are considered together.

8. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a co-operative credit society and is a registered Multi-State Co-operative Urban Credit Society established under the Multi-State Co-operative Societies Act, 2002 and is involved in the facility of providing credits and other banking facilities to its members. The assessee is also providing ATM card facility and RTGS facility to its members. The assessee has operations in Maharashtra, Gujarat, Madhya Pradesh, Andhra Pradesh, Karnataka, and Delhi and has around 100 branches across the country and is covered under the provisions of the Multi-State Co-operative Societies Act, 2002 and the bye-laws framed by it. The assessee has two types of members, namely, ordinary and nominal members. The ordinary members have the right to vote and are subscriber to the shares of the assessee. On the other hand, nominal members are admitted on payment of fees of Rs. 100 and don't have voting rights. The assessee operates different types of accounts, such as savings account, current account, recurring deposit account, loan account,

daily collection account, and FDR account. As per the assessee, in order to open and operate any of the above accounts, a person has to first become a member of the society, either ordinary or nominal. Further, the main source of income is interest on loans advanced to its members.

9. For the assessment year 2016-17, the assessee filed its original return of income on 17/10/2016 declaring a loss of Rs.2,62,66,952. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, a survey action under section 133A of the Act was conducted on the assessee on 08/02/2016, during which huge unexplained cash was found at the branch office at Raipur, therefore the survey was converted into search under section 132 of the Act on 09/02/2016 by executing the warrant on the assessee on 09/02/2016. Subsequent to the search assessment conducted on the assessee on 09/02/2016, a second search action under section 132 of the Act was also carried out on the assessee on 26/05/2017 at the head office of the assessee at Ahmednagar along with branch offices at Mumbai, Ulhasnagar, and residences of key persons of the assessee, who handled the business affairs of the assessee. Simultaneously, survey actions under section 133A of the Act were also carried out at the branch offices of the assessee at Ahmedabad, Chennai, and Hyderabad. In response to the notice issued under section 153A of the Act, the assessee filed its return of income on 02/10/2018 declaring a loss of Rs.2,62,66,952. Thereafter, notice under section 143(2) as well as notice under section 142(1) of the Act along with a detailed questionnaire were issued and served on the assessee. On the perusal of the documents found during the course of the search, the AO vide detailed show cause notice dated

03/12/2019 noted that there is non-compliance in maintaining proper KYC documents, non-compliance in collecting KYC details from the depositors, irregularities found in account opening forms of society, and non-compliance of Rule 114B in respect of cash deposits. Accordingly, the assessee was asked to show cause as to why the total cash deposited in its books should not be considered and taxed as unexplained cash credit under section 68 of the Act. In response thereto, the assessee filed its detailed submission before the AO. During the assessment proceedings, the AO also directed a Special Audit under section 142(2A) of the Act in the case of the assessee.

10. The AO on the basis of the details provided by the assessee and various evidences gathered during the search and seizure action as well as the report of the Special Auditor, vide order dated 10/05/2021 passed under section 143(3) read with section 153A of the Act, came to the conclusion that the assessee is not a bank within the provisions of the Banking Regulation Act and therefore is not empowered to carry on the business of banking. It was further held that the assessee is a credit co-operative society, which is empowered to mobilise deposits and grant loans to its members only. The AO held that the assessee has indulged in the gross violations of not only the Co-operative Society Act, 2002 but also its own bye-laws by deviating from the core principles envisaged in its Memorandum. The AO held that on perusal of documents found during the search and furnished during the assessment proceedings, it was found that the majority of the members of the assessee have not submitted their PAN cards and in numerous cases, photo identities are also not present in these documents. Further, the addresses that have

been provided are incomplete in most of the cases, while there was no information regarding the source of income, contact details, status of income tax return, etc. in the account opening form. The AO further held that there are several instances where the amount of cash deposits exceeded Rs. 50,000 by the depositor in a single day. However, the assessee has collected neither the PAN nor Form 60 from such depositor, which is a clear violation of Rule 114B of the Income Tax Rules, 1962. It was further held that the assessee has neither furnished any details regarding the identity, creditworthiness, and genuineness of its regular or nominal members nor produced any of them. Therefore, it was held that the assessee has failed to explain the source of credit entries contained in its books of account. Accordingly, the AO made an addition of the amounts credited in the accounts of the various account holders of the assessee under section 68 of the Act. It was also seen that the assessee had issued "*at par cheques/demand drafts*" as against the receipt of cash in the accounts of members, i.e., the assessee has collected cash in the accounts of its customers, deposited the same into its bank account and issued cheques/demand drafts to the customers as per their requirement. It was noted that, in some of the cases, the assessee has issued cheques/demand drafts by accepting cash from the customers without routing through their accounts maintained with the assessee. As regards, the at-par cheques/demand draft issued by the assessee, the AO held that the same have not been routed through the member's account, therefore it is not possible to identify the source of these cash receipts credited in the bank account. Accordingly, the AO held that the assessee has failed to explain the source of aforesaid credit entries contained in its books of account along with the

identity, genuineness, and creditworthiness of the persons who claimed to have deposited cash/cheques in the assessee society. Such kind of deposits were quantified by the AO at Rs.89,68,44,01,925/- and it was added to the total income of the assessee under section 68 of the Act as unexplained cash credit.

11. The learned CIT(A), vide impugned order, following its findings rendered in assessee's own case for the assessment year 2012-13 held that once it is accepted that the assessee is in the business of mobilisation of savings from and provision of credit facilities to its members, the entire transactions cannot be added as income of the assessee. However, the onus remains with the assessee to show that it has reasonably discharged its onus to explain the nature and source of any amount credited in its books of account. The learned CIT(A) further held that as regards the deposit slips it is quite inconceivable that the assessee, which claims to be a co-operative society, is unable to pinpoint the person making such deposits. After taking into consideration the discrepancies in KYC documentation as noted by the AO on the basis of the Special Auditor's report, the learned CIT(A) held that the assessee has not shifted the onus placed on it under section 68 of the Act. The learned CIT(A), drawing the analogy with Rule 114E, held that the assessee has failed to collect the PAN or report such transactions and therefore there is a failure on the part of the assessee to discharge its onus or shift its onus to the depositor, as regards the requirement of section 68 of the Act. However, the learned CIT(A) held that it would be unwise to hold that all such deposits are income of the assessee by considering the nature of business of the assessee. After

considering various factors as noted in paragraph 7.1(7.43) of its order, the learned CIT(A) held that there is culpability on the part of the assessee but nothing to warrant addition under section 68 of the entire transactions. By taking into consideration the commission charged by the assessee for collecting the cash deposit in its home branch and the commission charged for demand draft/at-par cheques, the learned CIT(A) came to the conclusion that it would be reasonable to estimate the income of the assessee @ 0.15% of such deposits for which no such commission has been charged. As regards the demand draft/at-par cheques, since the assessee has already recognised income @ 0.05%, the learned CIT(A) computed the income @0.10%. As far as the failure to comply with the membership requirements, violation of byelaws, etc., the learned CIT(A) came to the conclusion that they do not impinge on the taxation aspect per se. As a result, the learned CIT(A) granted partial relief to the assessee. Being aggrieved, both the assessee as well as the Revenue is in appeal before us.

12. We have considered the submissions of both sides and perused the material available on record. In the present case, it is evident from the record that upon perusal of the documents found during the course of the search, the AO noticed that the assessee is not following the rules and regulations of KYC and other guidelines as stipulated by the Reserve Bank of India ("RBI"). Further, it was noticed that the assessee has blatantly violated and disregarded the bye-laws, Multi-State Co-operative Society Act as well as due diligence expected in a similar business. The AO further noted that the assessee is hardly following any objective as envisaged in its Memorandum.

Further, on perusal of the KYC documents, and the documents pertaining to account opening, found during the course of search, the AO noted that the assessee has not collected the PAN of the depositor or Form 60 in certain cases. It is further evident from the record that during the assessment proceedings on perusal of the materials found during the course of the search, the AO issued show cause notice to the assessee after noting that there is non-compliance in maintaining proper KYC documents, non-compliance in collecting KYC details from the depositors, irregularities found in account opening forms of society, and non-compliance of Rule 114B in respect of cash deposits. After considering the submissions of the assessee, the AO held that the assessee could not substantiate the veracity of the cash depositors, and made the addition under section 68 of the Act on the basis that the assessee has failed to prove the identity and creditworthiness of the depositors, and genuineness of the transaction.

13. However, it is evident from the record that the assessee furnished various documents/evidence in response to the discrepancies pointed out by the AO during the assessment proceedings. The question is whether the discrepancies noticed in the documentation will attract section 68 of the Act or not. The provisions of section 68 are attracted when the assessee is not able to discharge the primary burden placed on its shoulders to prove cash credits in terms of section 68, which is a legal fiction introduced by the Legislature in order to curb practice of introducing unaccounted income in the form of cash credits such as loans, gifts, advances etc. The undisputed fact remains that the assessee is a credit co-operative society. It is formed for the purpose of

transacting credit business with its members, i.e., it is entitled to collect deposits from its members and advance loans to its members. The learned AR submitted that, under section 45K of the Reserve Bank of India Act, 1934, the assessee has been considered as Non-Banking Institution and its activities are monitored by the RBI. The assessee, being a co-operative society, is managed by the board selected out of its own members and such board is subjected to change every fiscal period. Hence no one can be considered to be exclusive owner of the co-operative society. Therefore, personal benefit vis-a-vis the assessee would be absent in the transactions undertaken by the assessee.

14. In the instant case, the assessee has received the money in the normal course of its business, i.e. by way of deposits from its members or by way of repayment of loans by its members, etc. Further, it is not disputed that the assessee has duly recorded in its books of account the transactions of collections of money as well as deposits made into its bank account. It is worth noting that no material evidence was found during the search or in the post search enquiry, which could lead to the conclusion that the money deposited by its members belongs to the assessee. In the statements of members as well as employees, i.e. cashier/branch manager, of the assessee recorded during the course of search and survey action, relied upon by the AO, there is nothing to show that the money has been used or siphoned off for the benefit of the assessee. Even in the post search enquiry, no material or evidence was found which could lead to the conclusion that the money deposited belongs to the assessee. Further, it is evident from assessee's submissions noted in the assessment order that in respect of all the instances noted by the AO, wherein

discrepancies were found in maintaining the KYC documentation and account opening form, the assessee furnished duly filled documents during the assessment proceedings. Further, from the statements relied upon by the AO, it is clearly discernible that some members have deposited cash in their accounts maintained with the assessee in lieu of commission, and the members have even disclosed the name of the parties to whom the cash belong to. There is also no material available on the record to show that the cash was deposited by the member in its account at the insistence of the assessee. On the contrary, from the statements recorded during the search and survey, it is evident that the members have admitted that parties used to accompany them for every cash deposit and they would give the details of the person to whom the money was to be transferred, which was to be conveyed to the assessee. The fact that such a member did not maintain the record of such parties cannot lead to the conclusion that the cash deposit belongs to the assessee. Even if any account is found to be benami, it is for the Revenue to examine the account holder and find out the real beneficiary. In the absence of any such detail/verification/statement, cash deposited in the account cannot be treated to be that of the assessee. Since the transactions of accepting deposits have been undertaken with the members of the assessee society only, the identity of the depositors and the genuineness of transactions cannot be doubted. Since the assessee has received money from its members in the normal course of carrying on of its business, which consisted of accepting deposits from its members and lending money to them, the assessee may not be required to prove creditworthiness. We are of the considered view that the material/documents found during the course of search raise doubt or suspicion

only against the members in whose account the money was deposited. We further find that on the basis of the information found during the course of search and survey action at the assessee's premises, proceedings under the Act have been initiated in certain cases against the members and addition have been made by the Revenue.

15. It is also evident from the record that the Special Auditor only highlighted the discrepancies in maintaining KYC documentation, account opening form and violation of society bye-laws by the assessee, without reference to any material which could lead to the conclusion that the amount deposited in member's account or amount received for the issuance of at-par cheques/demand drafts belongs to the assessee. It is pertinent to note that for discrepancies in maintaining KYC documentation, account opening form, and violation of society bye-laws, action can be taken against the assessee under the relevant statute or by the concerned authority, such as RBI, however, the same cannot lead to an addition in the hands of the assessee under 68 of the Act. Even for the violation of the provisions of Rule 114B by the depositors in certain cases and Rule 114E by the assessee also cannot lead to the conclusion that the money deposited in the members' account belongs to the assessee. Further, since the assessee is receiving the money in the normal course of its business from its members, there is merit in the submissions of the assessee that the society may not be required to prove the creditworthiness of the member, when the money is deposited in the account of the member. However, the assessee is duty bound to ascertain the creditworthiness of the member at the time of giving loan to the members.

16. As noted earlier, that the learned CIT(A), after agreeing with various factors in favour of the assessee, as noted in para 7.1(7.43) of its order, came to the conclusion that addition under section 68 of the Act of the entire transaction is not warranted. The relevant findings of the learned CIT(A), as rendered in para 7.1(7.43) of the impugned order, are as follows:-

"7.43. While deciding so, the following factors are also taken into account:

a. Unlike in the case of few other co-operative societies where intrusive action was undertaken by the Department, the appellant has made reasonable efforts to submit the details of depositors and other particulars.

b. A search action was conducted in the case of the appellant. The AO has not pointed out any asset / evidence warranting the usage of thousands of crores of rupees by the appellant for itself.

c. Vide letter dated 23.10.2019 before the AO, the appellant has submitted exhaustive details of customer particulars, statement of accounts etc. In specific, at para 5, it is noticed that appellant has submitted "Also the account opening form and KYC documents of all the customers of the society from Financial Year 2011-12 (AY 2012-13) to Financial year 2017-18 (AY 2018-19) are submitted in DVD / pendrive".

d. The statements of the various parties (customers, directors and employees) do not indicate that the funds have been used by the appellant for its personal benefits or that of its related parties. While there are contents related to charging of commission, failure to follow KYC norms, splitting of cash deposits etc, the siphoning off of funds by the appellant is not one of them.

e. The appellant has pointed out that subsequent to the search action, the Department has collected and disseminated the data as regards depositors to AOs for appropriate action. The appellant has contended that remedial action was taken in such cases and the deposits have already been brought to tax. Few such cases cited by the appellant are BhagabhaiKacharabhaiPatel (AY 2017-18), Mahesh HasanandKatariya (AY 2015-16, 2016-17), HemantKarangiya (AY 2015-16), MohdSaleemShaikh Akbar (AY 2016-17, 2017-18), Vishal Arora (AY 2014-15) AmolMhetre (AY 2016-17), BhagchandThawani Vaibhav Mehta, PrabhakarMahajan, LajwantiThawani (various AYs) etc. A perusal of the assessment orders shows that information has been disseminated after the search action and the AOs have taken remedial action.

e. The appellant undertakes activities similar to banking and a larger leeway has to be given as regards the ingredients of S.68 (of course, this depends on the facts of the case and it cannot be held as such in a blanket manner)."

For the above said reasons, we hold that the provisions of section 68 will not get attracted in the facts and circumstances of the present case.

17. In support of the aforesaid conclusion, we may refer to following decisions of the Tribunal in respect of additions made under section 68 of the Act in the hands of the co-operative credit society:-

(a) In the case of Sri Bhageeratha Pattina Sahakara Sangha Niyamitha (ITA No.646/Bang/2021 dated 18-02-2022), the Tribunal considered the issue as to whether the demonetised currencies collected from the members and deposited into the bank account of the assessee could be assessed as unexplained cash credit u/s 68 of the Act. The Tribunal decided this issue as under:-

"12. The last issue relates to addition made u/s 68 of the Act. The A.O. noticed that the assessee society has deposited "Specified bank notes" (demonetized notes) in the account maintained by it with CDCC Bank, Hosadurga as detailed below:-

.....

When enquired about the sources for making the above deposits, the assessee submitted that they represent cash received by it from its members towards repayment of loan, Pigmy collection, etc. The A.O. noticed that the Government has announced demonetization on 8.11.2016, whereby then existing Rs.1000/- & Rs.500/- currency notes were declared not to be legal tender. The A.O. took the view that the assessee has collected the above said amount after 8.11.2016, which is not permitted. Accordingly, the A.O. took the view that the above said amount represents unexplained money of the assessee and assessed the same u/s 68 of the Act. The A.O. also charged income tax on the above said deposit as per provisions of section 115BBE of the Act. The Ld. CIT(A) also confirmed the same.

13. The Ld. A.R. submitted that, under the provisions of section 68 of the Act, the assessee's liability is to explain the nature and sources of the money. He submitted that the assessee has explained the nature as well as sources i.e. the above said deposit was made out of its collections in the ordinary course of carrying on business, i.e., it represented money

deposited by its members towards repayment of loans, pigmy deposits, etc. Accordingly, he submitted that the assessee has discharged its responsibility u/s 68 of the Act. Further, the collections and deposits have been duly recorded in the books of account and hence, there is no reason to treat the same as unexplained money of assessee. The Ld. A.R. further submitted that merely because demonetized notes ceased to be legal tender, it does not mean that the amount collected by the assessee from its members would become unexplained money of the assessee. The Ld. A.R. also submitted that the Reserve Bank of India issued a series of notifications with regard to the deposit of demonetized notes from 8.11.2016 onwards. He submitted that the RBI, vide notification dated 14.11.2016, clarified that District Central Co-operative Banks can allow their existing customers to withdraw money from their accounts up to Rs.24,000/- per week. It further clarified that no exchange facility against demonetized notes or deposit of such notes should be entertained by them. In view of the above said notification, the assessee has stopped collecting the demonetized notes from 14.11.2016 onwards. Accordingly, the Ld. A.R. submitted that the above said deposits were collected by the assessee prior to 14.11.2016 and it cannot be considered as violation of any of the Provisions of the Act. Accordingly, he submitted that the A.O. was not justified in invoking the provisions of section 68 of the Act.

14. I heard Ld. D.R. on this issue and perused the record. I notice that the A.O. has not doubted the submissions of the assessee that the above said amount of Rs.24,47,500/- represents collection of money in the normal course of carrying on of business of the assessee, i.e., it represents money remitted by the members of the assessee society towards repayment of the loan taken by them and also towards pigmy deposits, etc. The Ld A.R submitted that the assessee has duly recorded in its books of account the transactions of collections of money as well as deposits made into bank account. Thus, I notice that the assessee has explained the nature and source of the above said amount of Rs.24,47,500/-, which was in-turn deposited by the assessee society in its bank account and further, all these transactions have been duly recorded in the books of account. Hence, the above said deposits cannot be considered as "unexplained money" in the hands of the assessee."

(b) In the case of Merchants Credit Co-operative Society Ltd (ITA No.320/Bang/2023), the Bangalore bench of Tribunal considered an identical issue and it was decided as under:-

"7. We have considered the rival submissions. The assessee is a credit co-operative society dealing with the members only. During the demonetisation period the members of the society have deposited cash in pygmie a/c, SB A/c, loan a/c. etc. The assessee has produced a list of depositors and the amount deposited by members with denominations of currency. The assessee has accepted the deposits from its members from 9.11.2016 to 14.11.2016. As per Gazette Notification of RBI & Govt. of India dated 08.11.2016, the assessee was not authorized to

accept cash deposits in SBNs. The AO observed that the assessee was not authorized to receive or collect money in SBNs of Rs.1,000 and Rs.500 which were not in legal tender w.e.f. 09.11.2016 and such transactions on or after 09.11.2016 cannot be entered in cash book. The cash deposits made by the members of the society had no value as such. The Assessing Officer issued show-cause notice by observing that the impugned amount should be treated as income of the assessee u/s 69A of the Act., however the AO made addition u/s 68 of the I.T. Act. The assessee has satisfied the requirement of section 69A of the Act and the AO did not give further opportunity to the assessee for addition u/s 68 of the I. T. Act. During the assessment proceedings, assessee filed the details of list of depositors and loanees who made cash deposits. The AO accepted that it was money deposited by the members and noted that the assessee had brought the entries in its books of account, therefore section 68 will apply and accordingly treated it as income u/s. 68. There is no doubt that the assessee has satisfied the identity of the deposits, who are members of the society and genuineness of the transactions because the amounts have been deposited in the members accounts only. If the AO had any doubts that the assessee has not satisfied the ingredients of section 68, he could have asked further details from the assessee, but the AO has not done the same, which clearly shows that the assessee has discharged its duty to satisfy the requirement of section 68. We further note that the SBNs have been deposited in the members accounts, accordingly, the assessee did not get any extra benefit as observed by the AO in his order at para No. 06 which was treated as income us 69A of the Act. In view of this, the provisions of section 68 is not applicable in the present facts of the case and the AO without discussing in detail has made addition u/s. 68 which is not proper. Therefore the addition is deleted."

(c) The Ahmedabad bench of Tribunal has expressed an identical view in the case of Shri Umiya Co-operative Credit Society Ltd vs. ITO (ITA No.277/Ahd/2022 dated 18-07-2024 by following the decisions rendered by the co-ordinate benches in the following cases:-

(i) ITO vs. C D Patani Nagari Sahakari Pat Sanstha (ITA No.727/PUN/2022 dated 28-03-2023.

(ii) Merchants Credit Co-op Society Ltd vs. ITO (ITA No.329/Bang/2023 dated 24.08.2023.

(iii) Saidatar Co-operative Credit Society Ltd vs. ITO (ITA No.1613/M/21 dated 05-09-2022.

18. However, as evident from the record, the learned CIT(A) by applying the real income theory made the addition on account of commission by considering

the commission charged by the assessee for cash deposits in remote branches. In this regard, it is pertinent to note that once there is no material/evidence on record to show usage of money by the assessee for itself or siphoning off the same for its benefit, then by applying the real income theory only the income from the activities of the assessee as a co-operative society can be brought to tax, which undisputedly has already been declared by the assessee. Further, we find that both lower authorities failed to appreciate that once the account holders are known, deposits are required to be explained by them as the amount has been deposited in the name of the account holders only and transaction is in their account. Further, it is pertinent to note that the demand draft or at par cheques are also issued at the instructions of the member and the amount is debited/credited from/to the member's account. From the statement of Chairman of the assessee society, placed on record, we find that there is nothing to show that the amount deposited in the accounts maintained with the assessee belongs to the assessee. We also find no basis in computation of the commission in the hands of the assessee, as the percentage of commission considered by the learned CIT(A) for making the addition is in respect of the cash deposited in remote branches, and for the issuance of demand draft/at par cheques, which in any case is charged by any bank for rendering these kind of services. There is also no allegation or material that the assessee charged any other commission from its members. On one hand, the learned CIT(A) has accepted that the assessee may have few genuine depositors, while on the other hand, computed commission @0.15% on the total cash deposits at non-remote branch. Therefore, we find

that the addition made by the learned CIT(A) is also not based on any justifiable basis.

19. As is said elsewhere, undoubtedly there may have been discrepancies in maintaining KYC documentation, account opening form, and violation of society bye-laws, however, the same does not substantiate any addition in the hands of the assessee under the Act, and for the same the remedial action needs to be taken in some other statute/regulations. Accordingly, in view of the facts and circumstances of the present case, we are of the considered view that in absence of any material to show that the cash deposited in the accounts of the members, maintained with the assessee society, belongs to the assessee, we do not find any basis in sustaining any addition in the hands of the assessee under section 68 of the Act. Accordingly, the addition made under section 68 of the Act and also the commission income estimated by learned CIT(A) are directed to be deleted. As a result, grounds no.3-4 raised in assessee's appeal are allowed, while grounds no.1-2 raised in Revenue's appeal are dismissed.

20. The issue arising in ground no.5, raised in assessee's appeal, pertains to disallowance of provision for standard assets.

21. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case, pertaining to this issue, are that during the assessment proceedings, it was noticed that the assessee has debited provision for standard assets amounting to Rs.50 lakh to the profit and loss account for the various years, as under:-

<i>Financial Year</i>	<i>Amount</i>
<i>2011-12</i>	<i>40,50,000</i>
<i>2012-13</i>	<i>75,00,000</i>
<i>2013-14</i>	<i>2,00,00,000</i>
<i>2014-15</i>	<i>1,00,00,000</i>
<i>2015-16</i>	<i>50,00,000</i>
<i>2016-17</i>	<i>1,00,00,000</i>
<i>2017-18</i>	<i>40,00,000</i>

22. It was further noticed that the assessee has not disallowed the aforesaid amounts while computing its income. Accordingly, the assessee was asked to explain as to why the aforesaid provision claimed should not be disallowed in the relevant assessment years and be added to the total income of the assessee. In response thereto, the assessee submitted that the society has made the provision on assets as per the details in its books of accounts and such provision includes the amount of provision for bad and doubtful debts, which is allowable under section 36(1)(viiia) of the Act. The AO vide order dated 10/05/2021 passed under section 143(3) read with section 153A of the Act did not agree with the submissions of the assessee and held that the provisions for standard assets are provision for contingent liabilities/unascertained losses and cannot be allowed in computing the total income of the assessee. It was further held that the provisions of any nature are specifically prohibited to be allowed under the Act and the claim of the assessee that the amount includes provisions for doubtful assets, which the assessee is entitled to claim under the provisions of section 36(1)(viiia) of the Act is also totally incorrect in law as the said section permits deduction for provision for doubtful debts only in case of scheduled banks, non-scheduled banks, co-operative bank, foreign bank, public financial institution, state

financial institution, and NBFC. Since the assessee is not covered within the definition of the aforesaid entity, therefore is not entitled to claim deduction under section 36(1)(viia) of the Act. Accordingly, the AO disallowed the provision for standard assets claimed by the assessee. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that the assessee does not fall in any of the categories to which section 36(1)(viia) of the Act applies.

23. During the hearing, the learned AR submitted that the assessee has claimed deduction under section 36(1)(viia) of the Act for provision for bad and doubtful debts, which is allowable to scheduled banks, co-operative bank, foreign bank, public financial institution, and NBFC. It was further submitted that the nature of the activity of the assessee is similar and equivalent to that of the banking and NBFC activity, and there is a direct nexus between the activity carried by the co-operative bank or NBFC and the assessee.

24. From a careful perusal of the provisions of section 36(1)(viia) of the Act, it is evident that the same is specifically in respect of provision for bad and doubtful debts made by a scheduled bank, non-scheduled bank, co-operative bank other than a primary agricultural credit society, or a primary co-operative agricultural and rural development bank. Further, the Explanation to section 36(1)(viia) of the Act deals with the meaning assigned to non-scheduled bank, rural branch, scheduled bank, public financial institution, state financial corporation, state industrial investment corporation, co-operative bank, primary agricultural credit society, primary co-operative agricultural and rural development bank and NBFC, under various statutes. It is pertinent to note

that co-operative bank, primary agricultural credit society, primary co-operative agricultural and rural development bank shall have the meaning as assigned to them in the Explanation to section 80P(4) of the Act. Further, NBFC shall have the meaning as assigned to it in section 45-I(f) of the Reserve Bank of India Act, 1935.

25. On the other hand, it is undisputed that the assessee is a co-operative credit society and is a registered Multi-State Co-operative Urban Credit Society established under the Multi-State Co-operative Societies Act, 2002 and is involved in the facility of providing credits and other banking facilities to its members. Therefore, we are of the considered view that the assessee does not fall within the meaning of any category of assessee considered under section 36(1)(viiia) of the Act. Accordingly, we find no infirmity in the findings of the learned CIT(A) in upholding the disallowance of provision for standard assets. As a result, ground no.5 raised in assessee's appeal is dismissed.

26. The issue arising in ground no.6, raised in assessee's appeal, pertains to disallowance of prior period expenses.

27. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case, pertaining to this issue, are that during the assessment proceedings, it was observed that various expenses of earlier years have been debited to the profit and loss account for the year under consideration. Accordingly, the assessee was asked to explain as to why the expenses claimed as prior period expenses be not disallowed under section 37 of the Act. In response thereto, the assessee

submitted that the prior period expenses are of routine nature for the purpose of the activities of the society and therefore, the same are fully allowable. The AO vide order passed under section 143(3) read with section 153A of the Act did not agree with the submissions of the assessee and held that it is a settled law that the expenses can be allowed for the period to which they pertain. The AO further held that since the assessee is following accrual method of accounting, the expenses could be allowed only for the period for which it pertains and not the period during which they are paid. Accordingly, the AO disallowed the prior period expenses debited to the profit and loss account. The learned CIT(A), vide impugned order, granted partial relief to the assessee and held that the expenses pertaining to the assessment years under appeal (i.e. assessment years 2012-13 to 2018-19) shall be allowed, however, where the expense pertains to the assessment year which is not in appeal, such expense shall stand disallowed.

28. We find that it is a settled proposition that expenditure shall be allowable in the year of crystallisation of its liability, even though the said expenditure was related to an earlier period. The said expenditure is treated as current year's expenditure in the year of crystallisation and accordingly allowable as deduction in that year. This principle has been upheld by the Hon'ble jurisdictional High Court in CIT vs. Mahanagar Gas Ltd (2014)(42 taxmann.com 40)(Bom.), wherein it was observed as under:-

"(e) We find that the liability in respect of work/services rendered in earlier years was crystallized only on receipt of the bill in the current assessment year. Moreover, the method adopted by the respondent assessee has been accepted by the revenue for the earlier assessment year and also while accounting for the income earned in respect of the work done in earlier years. In the

circumstances, the Revenue is required to adopt consistent approach and allow the expenditure which was crystallized during the assessment year under consideration as done in the earlier years. This finding of fact has not been shown to be perverse. In view of the above, we see no reason to entertain Question B as the does not raise any substantial question of law as it is essentially a finding of fact arrived at by two authorities concurrently."

29. In the present case, we find that the details of prior period expenses have not been examined in order to find out the year of crystallization of the liability. Accordingly, we deem it appropriate to restore this issue to the file of the jurisdictional AO for *de novo* adjudication and to determine the allowability of expenses by applying principles as discussed above. With the above directions, ground no.6 raised in assessee's appeal is allowed for statistical purposes.

30. The issue arising in ground no.7, raised in assessee's appeal pertains to disallowance under section 40A(3) of the Act.

31. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case, pertaining to this issue, are that during the assessment proceedings, it was noticed that the assessee has paid rental expenses to the parties, in excess of the prescribed limit as provided in section 40A(3) of the Act, by crediting their accounts maintained with the assessee, which was subsequently withdrawn by the said member either in cash or transferred to some other bank accounts. Accordingly, the assessee was asked to explain as to why the said payment which has been paid other than by a permissible mode of payment be not disallowed under section 40A(3) of the Act. The AO after considering the submissions of the assessee held that mode of payment by crediting the

accounts of the members maintained with the assessee's society cannot be considered to be payment by account payee cheque/demand draft or for that matter regular banking channels. Accordingly, the AO disallowed the expenditure under section 40A(3) of the Act. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the addition on account of rental expenses under section 40A(3) of the Act.

32. As per the assessee, the rental expenses have been paid as per the rent agreement after deduction of TDS. It is further the submission of the assessee that there was no violation of provision of section 40A(3) of the Act as the amount was paid directly in the bank account and the assessee does not have any control over the account of the member to whom the payments have been made.

33. Before proceeding further, it is relevant to note that as per the provisions of section 40A(3) of the Act, no deduction shall be allowed in respect of expenditure when the payment or aggregate of payments exceeding Rs.20,000 is made to a person in a day by way of a mode other than prescribed by the section. Further, the first proviso to section 40A(3) of the Act provides the exception to the aforesaid provision in such cases and under such circumstances as prescribed in Rule 6DD of the Income Tax Rules, 1962 (*"the Rules"*).

34. In the present case, there is no dispute amongst the parties that the amount credited in member's accounts is qua the rental expenditure paid by

the assessee. From the record, it is evident that the AO has considered the withdrawal by the member in cash from its accounts to be against the very purpose of section 40A(3) of the Act. However, as noted above, the provisions of section 40A(3) of the Act only impose restrictions on the payer while claiming deduction of expenditure incurred in a mode other than provided under the section and does not impose any impediment on the recipient. Thus, we find no merits in the findings of the AO that withdrawal by the member in cash from its account is against the very purpose of section 40A(3) of the Act. The AO has made the disallowance under section 40A(3) of the Act also on the basis that the amount was not paid into any bank account of the landlord but the account of the landlord maintained with the assessee society was credited. At this stage, it is pertinent to note the object of introduction of section 40A(3) of the Act, as explained by the CBDT, vide Circular No.6P of 1968, dated 06/07/1968, as follows:-

"76. Sub-section (3) of new section 40A makes a provision for the disallowance of expenditure incurred in businesses and professions for which payment is made in an amount exceeding Rs. 2,500, otherwise than by a crossed cheque drawn on a bank or a crossed bank draft. This provision will apply in respect of payments made after a date to be notified by Government, being a date not later than 31-3-1969. This provision is designed to counter evasion of tax through claims for expenditure shown to have been incurred in cash with a view to frustrating proper investigation by the Department as to the identity of the payee and the reasonableness of the payment."

(Emphasis supplied)

35. Thus, it is evident that the provisions of section 40A(3) of the Act were introduced to counter evasion of tax by way of claiming expenditure which is incurred in cash, wherein the identity of the payee and reasonableness of the payment is unclear. However, in the present case, it is undisputed that the assessee is a credit co-operative society and received the money in the normal

course of its business, i.e. through repayment of loans by its members or deposits by its members, etc. The landlord of the premises has also opened and maintained a savings/current account with the assessee. Thus, while carrying on the ordinary business of receiving deposits from its members, the assessee has also credited rental payments into the accounts of the landlord members maintained with assessee society, since the activities of the assessee were akin to banking activities, but restricted to its members only. Therefore, in the present case, there cannot be any dispute regarding the identity of payee, i.e. the landlord members. Further, it is also not disputed that the payment was made on account of rent as per the rent agreement. There is also no allegation that the assessee has not deducted applicable TDS while crediting the rental payment to the account of the landlord members. Considering the fact that the activities of the assessee are akin to banking activities; and the landlords have opened savings/current accounts with the assessee, we are of the considered view that the rent payments so credited to the accounts of the landlords do not violate the objective of introducing section 40A(3) of the Act. Therefore, the disallowance of rental payment under section 40A(3) of the Act is directed to be deleted. As a result, ground no.7 raised in assessee's appeal is allowed.

36. The issue arising in ground no.8, raised in assessee's appeal, pertains to disallowance of deduction under section 80P of the Act.

37. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was observed that assessee has claimed deduction under section 80P of the Act. It was further

observed that the assessee has not admitted members in compliance with the provisions of its bye-laws and has earned income from providing services to non-members, i.e. by issue of "at par cheques" in lieu of cash. It was further noticed that persons/entities, who are not ordinary members, have also operated accounts in the assessee society. Accordingly, the assessee was asked to explain as to why the claim of deduction under section 80P of the Act be not disallowed. In response thereto, the assessee submitted that the society deals with the account holders, who are members and all the transactions are carried out by the members of the society. It was further submitted that all the co-operative societies other than those coming under the control of RBI are eligible for deduction under section 80P(2)(a) of the Act and a co-operative society carrying on banking activities with its members is not a co-operative bank licensed by the RBI. The assessee denied that it has provided any services to the non-members and the examples given by the AO in the show cause notice pertains to services rendered on the instructions of the members. Thus, it was submitted that the assessee is eligible for deduction under section 80P of the Act. The AO vide order passed under section 143(3) read with section 153A of the Act did not agree with the submissions of the assessee and held that section 80P of the Act applies only to societies who transact exclusively with its members and in the present case the assessee has transacted with non-members. Accordingly, the AO took support of the decision rendered by the Hon'ble Supreme Court in Citizen Co-operative Society Ltd v/s ACIT, [2017] 397 ITR 1 (SC) and rejected the claim of the assessee for deduction under section 80P of the Act. The learned CIT(A), vide

impugned order, dismissed the ground raised by the assessee and upheld the disallowance of deduction claimed under section 80P of the Act.

38. We have considered the submissions of both sides and perused the material available on record. The question that requires examination is whether the decision rendered by Hon'ble Supreme Court in Citizen Co-operative Society Ltd (supra) shall apply to the facts of the present case or not? Before proceeding further, it is relevant to note the provisions of section 80P of the Act, under which the assessee has claimed the deduction in the present case. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an assessee being a co-operative society. Further, the term "*co-operative society*" is defined under section 2(19) of the Act as under:

"(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies ;"

39. In the present case, the assessee is a co-operative credit society and is a registered Multi-State Co-operative Urban Credit Society established under the Multi-State Co-operative Societies Act, 2002 and is involved in the activities of a credit co-operative society, viz., accepting deposits from its members and providing credit facilities to them. The assessee has two types of members, namely, ordinary and nominal members. The ordinary members have the right to vote and are subscriber to the shares of the assessee. On the other hand, nominal members are admitted on payment of fees of Rs. 100 and don't have voting rights. On the basis that the assessee has transacted with non-members, i.e. with persons who were not entitled to be members as per the

bye-laws, persons who have been admitted as member without compliance of bye-laws or in violation of bye-laws, persons who have been claimed to be nominal members, the lower authorities have denied the deduction claimed under section 80P of the Act by the assessee. We find that as per section 26 of the Multi-State Co-operative Societies Act, 2002, multi-state co-operative society may admit a person as a nominal member, if provided in its bye-laws. The provisions of section 26 of the Multi-State Co-operative Societies Act, 2002, reads as follows:-

"26. Nominal or associate member of society.—A multi-State co-operative society may, if provided in its bye-laws, admit a person as nominal or associate member:

Provided that no such nominal or associate member shall have any interest in the management thereof including right to vote, elect as a director of the board or participate in the general body meetings.

Provided further that nominal or associate member can be issued non-voting shares which may not confer any interest in the management of the multi-State co-operative society including right to vote, to be elected as a director of the board or participate in the general body meetings:

Provided also that in case of multi-State co-operative bank, such shares shall be issued in accordance with the instructions issued by the Reserve Bank from time to time."

40. The relevant provisions regarding membership in the bye-laws of the assessee, as noted in the impugned order, are reproduced as follows:-

- (a) There are ordinary members and nominal members.
- (b) Ordinary members need to subscribe to at least a value of 3 shares.
- (c) As per clause 5 of the bye-laws, nominal members must pay a fee of Rs. 100 but most importantly the nominal members would not be allowed to subscribe to the share capital of the assessee, are not eligible to take/have any interest in the management of the society, are not eligible to vote or contest in any election as director of the Board and cannot also participate in the general body meeting of the assessee society.

41. Thus, from the above it is evident that the bye-laws of the assessee have been framed in conformity with the provisions of the Multi-State Co-operative Societies Act, 2002. Further, the bye-laws of the assessee permit nominal members, upon payment of a fee, to have the membership of the assessee society. Therefore, we are of the considered view that the nominal members are members of the assessee society under the bye-laws of the society read with section 26 of the Multi-State Co-operative Societies Act, 2002.

42. The AO as well as the learned CIT(A) has placed reliance upon the decision of the Hon'ble Supreme Court in Citizen Co-operative Society Ltd v/s ACIT, [2017] 397 ITR 1 (SC), in support of its conclusion that the co-operative society which has failed to abide by its bye-laws, regulations and provisions of the respective Co-operative Society Act, is not eligible for the deduction under section 80P of the Act. The relevant observations of the Hon'ble Supreme Court, in this regard, are reproduced as follows:-

*"25. So far so good. However, it is significant to point out that the main reason for disentitling the appellant from getting the deduction provided under Section 80P of the Act is not sub-section (4) thereof. What has been noticed by the Assessing Officer, after discussing in detail the activities of the appellant, is that **the activities of the appellant are in violations of the provisions of the MACSA under which it is formed.** It is pointed out by the Assessing Officer that the assessee is catering to two distinct categories of people. The first category is that of resident members or ordinary members. There may not be any difficulty as far as this category is concerned. However, the assessee had carved out another category of 'nominal members'. These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in real sense. Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loans, etc. to the members of the first category. It is found, as a matter of fact, that the depositors and borrowers are quiet distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative*

*society. **It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies.** With indulgence in such kind of activity by the appellant, it is remarked by the Assessing Officer that the activity of the appellant is in violation of the Co-operative Societies Act. Moreover, it is a co-operative credit society which is not entitled to deduction under Section 80P(2)(a)(i) of the Act."*

(emphasis supplied)

43. From a careful perusal of the aforesaid decision, we find that in Citizen Co-operative Society Ltd (supra), the Hon'ble Supreme Court held that Citizen Co-operative Society Ltd is not entitled to claim the deduction under section 80P(2)(a)(i) of the Act on the basis that the society has granted loans to general public, and the society has catered to ordinary members as well as its the nominal members, without any approval from the Registrar of the Societies, therefore the activities of the society were found to be in violation of the provisions of the Mutually Aided Co-operative Societies Act, 1995, under which it was formed. However as noted above, in the present case, the provisions of section 26 of the Multi-State Co-operative Societies Act, 2002 permits co-operative society to admit a person as a nominal member, and under the bye-laws of the assessee society, nominal members are admitted as members on payment of fees of Rs. 100 without having any voting rights. Thus, in the present case, the assessee has complied with the provisions of the Multi-State Co-operative Societies Act, 2002, under which it is formed.

44. Further, unlike the facts in Citizen Co-operative Society Ltd (supra), the Multi-State Co-operative Societies Act, 2002 expressly permits loan to non-members under section 66(2) on the security of his deposit. The said section reads as follows:-

"66. Restriction on loans.—(1) A multi-State co-operative society, other than a co-operative bank, shall not make a loan to a member on the security of his share or on the security of a non-member.

(2) Notwithstanding anything contained in sub-section (1), a multi-State co-operative society may make a loan to a depositor on the security of his deposit."

45. Since the assessee has given loans as per the provisions of the Multi-State Co-operative Societies Act, 2002, therefore this fact also distinguishes the present case from the facts available in Citizen Co-operative Society Ltd (supra).

46. We may also gainfully refer to a subsequent decision rendered by Hon'ble Supreme Court in Mavilayi Service Co-operative Bank Ltd. v/s CIT, Calicut, [2021] 431 ITR 1 (SC), wherein, the Hon'ble Supreme Court, after considering the definition of the term "*members*" in Kerala Co-operative Societies Act, 1969 held that unlike the Andhra Pradesh Act, which was considered in the case of Citizen Co-operative Society Ltd (supra), "*nominal members*" are members as defined under the Kerala Act, and therefore, the loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i) of the Act. The relevant findings of the Hon'ble Supreme Court, in the aforesaid decision, are reproduced as follows:-

"46. It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in U.P. Cooperative Cane Unions' Federation Ltd. v. CIT [1997] 11 SCC 287 referred to section 80P of the IT Act and then held:

"8. The expression "members" is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in Section 80-P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression

"members" in Section 80-P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:

"2. (n) 'Member' means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;"

Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i)."

47. Therefore, we are of the considered view that the reliance placed by the lower authorities on the decision of the Hon'ble Supreme Court in Citizen Co-operative Society Ltd (supra) is completely misplaced, as the said decision was rendered on its own facts, which are different from the present case.

48. In the present case, it is evident from the record that the lower authorities also alleged that the assessee has earned income from providing services to non-members, i.e. by issue of "at par cheques" in lieu of cash. However, it is pertinent to note that the demand draft or at par cheques are also issued at the instructions of the member and the amount is debited/credited from/to the member's account. Therefore, it was a transaction which was carried out at the behest of the member in the accounts of the member maintained with the assessee society. Thus, we are of the view that the same cannot be treated as providing services to non-members. At this stage, it is pertinent to note that the following observations of the Hon'ble Supreme Court in Mavilayi Service Co-operative Bank Ltd. (supra), rendered in context of deduction under section 80P of the Act:-

"33.Once it is clear that the co-operative society in question is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society in question from availing of the deduction. The distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted."

49. In the present case, we find that the assessee has exclusively made the transactions in the accounts of its members, i.e. ordinary members and nominal members, and the issuance of "at par cheques" in lieu of cash was also at the behest of the members of the society. Hence the assessee society, herein, is eligible for deduction under section 80P of the Act. Before concluding, we may also note that the Hon'ble Supreme Court in PCIT v/s Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd. [2023] 150 taxmann.com 173 (SC), held that a taxpayer who is merely giving credit to its members cannot be said to be the Co-operative Banks/Banks under the Banking Regulation Act and the banking activities under the Banking Regulation Act are altogether different. Therefore, the Hon'ble Supreme Court held that the assessee, a co-operative credit society, could not be termed a Bank/Co-operative Bank and that being a credit society, it was entitled to exemption under section 80(P)(2) of the Act. We may also reiterate that the AO and other authorities under the Act cannot go behind the registration of the co-operative society in order to discover as to whether it was conducting business in accordance with its bye-laws. Therefore, we are of the considered view that the assessee is entitled to claim deduction under section 80P of the Act. As a result, ground No. 8 raised in assessee's appeal is allowed.

50. In the result, the appeal by the assessee is partly allowed, while the appeal by the Revenue is dismissed.

ITA no.1726/Mum./2023(Assessee's appeal)
ITA no.2077/Mum./2023 (Revenue's appeal)
Assessment Year 2017-18

51. In its appeal for the assessment year 2017-18, the assessee has raised the following grounds:-

"The following grounds of appeal are independent of, and without prejudice to one another-

1. It is submitted that in the facts and the circumstances of the case, and in law, the approval granted under section 153D by the competent authority is mechanical and without application of mind.

2. It is submitted that in the facts and the circumstances of the case, and in law, the Assessing Officer erred in issuing a notice dated 27.12.2019 directing the appellants to get the accounts audited under section 142(2A) at the fag end of the assessment proceedings which were getting barred by limitation on 31.12.2019 and without disposing of the objections raised by the appellants. Thus, the aforesaid direction of the Assessing Officer to get the accounts audited under section 142(2A) is nothing but mere tactics to extend the period of limitation which the Courts have held as bad in law.

3. Addition under section 68 of the Act for aggregate cash deposits and credit transactions but excluding the remote deposits.

3.1. The CIT(A) erred in sustaining the addition under section 68 of the Act at Rs 5,06,72,196, estimated at the rate of 0.15 per cent of Rs 3,378.14 crores being the aggregate cash deposits and credit transactions but excluding the remote deposits of all the account holders in the appellant-society against the addition of Rs 4,665.97 crores made by the Assessing Officer.

3.2. The CIT(A) erred in treating the appellants as facilitator of alleged accommodation entries given by the deposit holders relying on the alleged discrepancies observed by the Assessing Officer and special auditor in KYC documentation maintained by the appellant-society, without bringing any documentary evidences on record to support such allegation and entirely on surmises, suspicion and conjectures.

3.3. The impugned action of the CIT(A) in sustaining the addition on estimation basis is erroneous inasmuch as, the same is not in accordance with the provisions of section 68 of the Act.

4. Addition under section 68 of the Act for aggregate demand draft/ at par cheque issued by the appellant-society

4.1. The CIT(A) erred in sustaining the addition under section 68 of the Act at Rs 35,13,384, estimated at the rate of 0.10 per cent of Rs 351.33 crores being the aggregate demand draft at par cheques issued by the appellant-society on receipt of cash from the account holders against the addition of Rs 351.33 crores made by the Assessing Officer.

4.2. The CIT(A) erred in treating the appellants as facilitator of alleged accommodation entries given by the deposit holders relying on the alleged discrepancies observed by the Assessing Officer and special auditor in KYC documentation maintained by the appellant-society, without bringing any documentary evidences on record to support such allegation and entirely on surmises, suspicion and conjectures.

4.3. The impugned action of the CIT(A) in sustaining the addition on estimation basis is erroneous inasmuch as, the same is not in accordance with the provisions of section 68 of the Act

5. Disallowance of provision of standard asset Rs 1,00,00,000

5.1. The CIT(A) erred in sustaining the disallowance made by the Assessing Officer of provision of standard assets of Rs 1,00,00,000

5.2. It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of provision of standard assets without appreciating the facts of the case pray that the impugned disallowance of Rs 1,00,00,000 ought to be deleted.

6. Disallowance of provision for gratuity Rs 3,50,000

6.1. The CIT(A) erred in sustaining the disallowance made by the Assessing Officer of provision of gratuity of Rs 3,50,000

6.2. It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of provision of standard assets without appreciating the facts of the case and hence, the impugned disallowance of Rs 3,50,000 is bad in law and ought to be deleted

7. Disallowance of prior period expenses Rs 60,11,035

7.1. The CIT(A) erred in sustaining disallowance made by the Assessing Officer of prior period expenses of Rs 60,11,035

7.2. It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of prior period expenses without appreciating the facts of the case and hence, pray that impugned disallowance of Rs 60,11,035 is bad in law and ought to be deleted

8. Disallowance under section 40A(3) of Rs 2,37,52,201

8.1. The CIT(A) erred in sustaining the disallowance made by the Assessing Officer under section 40A(3) aggregating Rs 2,37,52,201 being the rent expenses incurred during the year under reference.

8.2. It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of rent expenses under section 40A(3) without appreciating the facts of the case and hence, pray that impugned disallowance of Rs 2,37,52,201 is bad in law and ought to be deleted.

9. Enhancement of income by the CIT(A) of Rs 1,17,890

9.1. The CIT(A) erred in enhancing the assessment by making disallowance of Rs 1,17,890, being miscellaneous expenses debited to profit and loss account for contravention of provisions of section 40A(3).

9.2. It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) erred in making the impugned disallowance without appreciating the facts of the case and hence, pray that impugned disallowance of Rs 1,17,890 is bad in law and ought to be deleted

10. Disallowance of deduction under section 80P

10.1. The CIT(A) erred in sustaining the disallowance made by the Assessing Officer of deduction under section 80P claimed by the appellants.

10.2. It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of deduction of under section SOP without appreciating the facts of the case and hence, pray that impugned disallowance is bad in law and ought to be deleted.

The appellants crave leave to add to, alter or amend the aforestated grounds of appeal."

52. While the Revenue has raised the following grounds in its appeal for the assessment year 2017-18:-

"1. On the facts and in circumstances of the case, the Ld.CIT(A) erred in deleting the addition of Rs. 4665,97,37,942/- made by the Assessing Officer u/s F 68 of the Income tax Act, 1961 on account of sum credited in the books of account as unexplained credit.

2. On the facts and in circumstances of the case, the Ld.CIT(A) erred in deleting the addition of Rs. 351,33,83,926/- made by the Assessing Officer u/s 68 of the Income tax Act, 1961 on account of cash credited in the books of account for issue of at par cheque/DD, as unexplained credit.

"3. The appellant craves to leave, to add, to amend and/ or to alter any of the ground of appeal, if need be."

53. During the hearing, no material was placed on record in support of ground no.1 raised in assessee's appeal. Accordingly, the same is dismissed.

54. In ground no.2, raised in assessee's appeal, the assessee has challenged the direction of the AO to get the accounts audited under section 142(2A) of the Act at the fag end of the assessment proceedings. Since a similar issue has already been decided in assessee's appeal for the assessment year 2016-17, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, ground no.2 is dismissed.

55. The issue arising in grounds no.3-4 raised in assessee's appeal, and ground no.1-2 raised in Revenue's appeal pertains to addition under section 68 of the Act on account of cash deposits and credit transactions. Since a similar issue has already been decided in assessee's and Revenue's appeal for the assessment year 2016-17, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. As a result, grounds no.3-4 raised in assessee's appeal are allowed, while grounds no.1-2 raised in Revenue's appeal are dismissed.

56. The issue arising in ground no.5, raised in assessee's appeal, pertains to disallowance of provision for standard asset. Since a similar issue has already been decided in assessee's appeal for the assessment year 2016-17, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. As a result, ground no.5 raised in assessee's appeal is dismissed.

57. The issue arising in ground no.6, raised in assessee's appeal, pertains to disallowance of provision for gratuity.

58. We have considered the submissions of both sides and perused the material available on record. During the assessment proceedings, the AO noted that the assessee had made a provision for gratuity but the same has not been paid. Since the gratuity provisions can be allowed only when the actual payment thereof is made to the gratuity fund as per section 43B of the Act or to the employee as per section 40A(7) of the Act, the AO disallowed the provision for gratuity in absence of any evidence establishing the payment of same. The learned CIT(A), vide impugned order, upheld the disallowance of provision for gratuity. As per the assessee, it has made the provision for gratuity in its books of accounts and the same was invested in the Gratuity Fund, which is separately disclosed in the balance sheet. However, in the present case, there is no material available on record to show that the provision was made by the assessee for payment of a sum by way of contribution towards "approved gratuity fund". Therefore, section 40A(7)(b) of the Act is not applicable and under section 40A(7)(a) of the Act no deduction is allowable in respect of any provision made by the assessee for payment of gratuity. Further, under section 43B of the Act, the sum payable by the assessee as an employer by way of contribution to gratuity fund is allowable upon actual payment, therefore, even under section 43B of the Act the provision is not allowable. However, we direct that the gratuity payment be allowed in the year of payment. As a result, ground no.6 raised in assessee's appeal is dismissed.

59. The issue arising in ground no.7, raised in assessee's appeal, pertains to disallowance of prior period expenses. Since a similar issue has already been

decided in assessee's appeal for the assessment year 2016-17, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. With similar directions, ground no.7 raised in assessee's appeal is allowed for statistical purposes.

60. The issue arising in ground no.8, raised in assessee's appeal pertains to disallowance of rental expenditure under section 40A(3) of the Act. Since a similar issue has already been decided in assessee's appeal for the assessment year 2016-17, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. As a result, ground no.8 raised in assessee's appeal is allowed.

61. The issue arising in ground no.9, raised in assessee's appeal, pertains to enhancement of income made by the learned CIT(A) by disallowing the expenditure under section 40A(3) of the Act.

62. We have considered the submissions of both sides and perused the material available on record. During the appellate proceedings, upon perusal of the details filed by the assessee in respect of expenditure incurred in cash, the learned CIT(A) noted that the cash expenses of Rs.1,17,890 are in respect of the assessment year 2017-18, while Rs.7,22,961 are in respect of the assessment year 2018-19 (as against assessment year 2013-14 and the assessment year 2014-15, respectively, stated by the AO). Accordingly, the learned CIT(A) directed the AO to delete the addition for the assessment years 2013-14 and 2014-15. During the appellate proceedings, the assessee was asked as to why the enhancement in respect of section 40A(3) of the Act

disallowance be made for Rs. 1,70,890 for the assessment 2017-18 and Rs. 7,22,961 for the assessment year 2018-19. As per the assessee, it has passed the consolidated single entry for expenses paid to different parties in the books of accounts as per the details maintained for the expenses incurred for shifting of branches. Further, it is the plea of the assessee that if the individual expenses are considered as per separate voucher for each expenses, then the amount spent by the assessee in cash would be within the limit specified for cash payment of the expenses under the provisions of section 40A(3) of the Act. Accordingly, we deem it appropriate to restore this issue to the file of the jurisdictional AO for *de novo* adjudication, as per law, with a direction to the assessee to furnish the breakup of the expenses paid as per separate voucher. As a result, ground no.9 raised in assessee's appeal is allowed for statistical purposes.

63. The issue arising in ground no.10, raised in assessee's appeal, pertains to disallowance of deduction under section 80P of the Act. Since a similar issue has already been decided in assessee's appeal for the assessment year 2016-17, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. As a result, ground no.10 raised in assessee's appeal is allowed.

64. In the result, the appeal by the assessee is partly allowed, while the appeal by the Revenue is dismissed.

ITA no.1727/Mum./2023 (Assessee's appeal)
ITA no.2078/Mum./2023 (Revenue's appeal)
Assessment Year 2018-19

65. In its appeal for the assessment year 2018-19, the assessee has raised the following grounds:-

"The following grounds of appeal are independent of, and without prejudice to one another-

1. It is submitted that in the facts and the circumstances of the case, and in law, the Assessing Officer erred in issuing a notice dated 27.12.2019 directing the appellants to get the accounts audited under section 142(2A) at the fag end of the assessment proceedings which were getting barred by limitation on 31.12.2019 and without disposing of the objections raised by the appellants. Thus, the aforesaid direction of the Assessing Officer to get the accounts audited under section 142(2A) is nothing but mere tactics to extend the period of limitation which the Courts have held as bad in law.

2. Addition under section 68 of the Act for aggregate cash deposits and credit transactions but excluding the remote deposits

2.1. The CIT(A) erred in sustaining the addition under section 68 of the Act at Rs 37,82,666, estimated at the rate of 0.15 per cent of Rs 252.17 crores being the aggregate cash deposits and credit transactions but excluding the remote deposits of all the account holders in the appellant-society against the addition of Rs 1,041.50 crores made by the Assessing Officer.

2.2. The CIT(A) erred in treating the appellants as facilitator of alleged accommodation entries given by the deposit holders relying on the alleged discrepancies observed by the Assessing Officer and special auditor in KYC documentation maintained by the appellant-society. without bringing any documentary evidences on record to support such allegation and entirely on surmises, suspicion and conjectures.

2.3. The impugned action of the CIT(A) in sustaining the addition on estimation basis is erroneous inasmuch as, the same is not in accordance with the provisions of section 68 of the Act.

3. Addition under section 68 of the Act for aggregate demand draft/ at par cheque issued by the appellant-society

3.1. The CIT(A) erred in sustaining the addition under section 68 of the Act at Rs 13,21,839, estimated at the rate of 0.10 per cent of Rs 132.18 crores being the aggregate demand draft/ at par cheques issued by the appellant-society on receipt of cash from the account holders against the addition of Rs 132.18 crores made by the Assessing Officer.

3.2 The CIT(A) erred in treating the appellants as facilitator of alleged accommodation entries given by the deposit holders relying on the alleged discrepancies observed by the Assessing Officer and special auditor in KYC documentation maintained by the appellant-society, without bringing any documentary evidences on record to support such allegation and entirely on surmises, suspicion and conjectures.

3.3. *The impugned action of the CIT(A) in sustaining the addition on estimation basis is erroneous inasmuch as, the same is not in accordance with the provisions of section 68 of the Act*

4. Disallowance of provision of standard asset Rs 40,00,000

4.1. *The CIT(A) erred in sustaining the disallowance made by the Assessing Officer of provision of standard assets of Rs 40,00,000*

4.2. *It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of provision of standard assets without appreciating the facts of the case pray that the impugned disallowance of Rs 40,00,000 ought to be deleted.*

5. Disallowance of prior period expenses Rs 85,54,550

5.1. *The CIT(A) erred in sustaining disallowance made by the Assessing Officer of prior period expenses of Rs 85,54,550*

5.2. *It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of prior period expenses without appreciating the facts of the case and hence, pray that impugned disallowance of Rs 85,54,550 is bad in law and ought to be deleted*

6. Disallowance under section 40A(3) of Rs 1,45,10,385

6.1. *The CIT(A) erred in sustaining the disallowance made by the Assessing Officer under section 40A(3) aggregating Rs 1,45,10,385 being the rent expenses incurred during the year under reference.*

6.2. *It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of rent expenses under section 40A(3) without appreciating the facts of the case and hence, pray that impugned disallowance of Rs 1,45,10,385 is bad in law and ought to be deleted.*

7. Enhancement of income by the CIT(A) of Rs 7,22,961

7.1. *The CIT(A) erred in enhancing the assessment by making disallowance of Rs 7,22,961. being miscellaneous expenses debited to profit and loss account for contravention of provisions of section 40A(3).*

7.2. *It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) erred in making the impugned disallowance without appreciating the facts of the case and hence, pray that impugned disallowance of Rs 7,22,961 is bad in law and ought to be deleted.*

8. Addition under section 68 of Rs 48,16,43,092

8.1. *The CIT(A) erred in sustaining the addition made by the Assessing Officer under section 68 of the Act aggregating Rs 48,16,43,092, being the unilateral action of the appellants in considering said amount as receivable from banks where appellant-society has maintained their bank accounts.*

8.2. *It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the addition made by the Assessing Officer without appreciating the facts of the case and hence, pray that impugned addition of Rs 48,16,43,092 is bad in law and ought to be deleted*

8.3. *The CIT(A) erred in sustaining the disallowance without providing sufficient of being heard and hence, pray that impugned addition of Rs 48,16,43,092 is bad in law and ought to be deleted*

9. *Disallowance of deduction under section 80P*

9.1. *The CIT(A) erred in sustaining the disallowance made by the Assessing Officer of deduction under section 80P claimed by the appellants.*

9.2. *It is submitted that in the facts and in the circumstances of the case and in law, the CIT(A) sustained the disallowance of deduction of under section 80P without appreciating the facts of the case and hence, pray that impugned disallowance is bad in law and ought to be deleted.*

The appellants crave leave to add to, alter or amend the aforesaid grounds of appeal."

66. While the Revenue has raised the following grounds in its appeal for the assessment year 2018-19:-

"1. On the facts and in circumstances of the case, the Ld.CIT(A) erred in deleting the addition of Rs. 1041,50,34,572/- made by the Assessing Officer u/s 68 of the Income tax Act, 1961 on account of sum credited in the books of account as unexplained credit.

2. On the facts and in circumstances of the case, the Ld.CIT(A) erred in deleting the addition of Rs. 132,18,39,024/- made by the Assessing Officer u/s 68 of the Income tax Act, 1961 on account of cash credited in the books of account for issue of at par cheque/DD, as unexplained credit.

3. The appellant craves to leave, to add, to amend and/ or to alter any of the ground of appeal, if need be."

67. In ground no.1, raised in assessee's appeal, the assessee has challenged the direction of the AO to get the accounts audited under section 142(2A) of the Act at the fag end of the assessment proceedings. Since a similar issue has already been decided in assessee's appeal for the assessment year 2016-17,

therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, ground no.1 is dismissed.

68. The issue arising in grounds no.2-3 raised in assessee's appeal, and ground no. 1-2 raised in Revenue's appeal pertains to addition under section 68 of the Act on account of cash deposits and credit transactions. Since a similar issue has already been decided in assessee's and Revenue's appeal for the assessment year 2016-17, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. As a result, grounds no.2-3 raised in assessee's appeal are allowed, while grounds no. 1-2 raised in Revenue's appeal are dismissed.

69. The issue arising in ground no.4, raised in assessee's appeal, pertains to disallowance of provision for standard asset. Since a similar issue has already been decided in assessee's appeal for the assessment year 2016-17, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. As a result, ground no.4 raised in assessee's appeal is dismissed.

70. The issue arising in ground no.5, raised in assessee's appeal, pertains to disallowance of prior period expenses. Since a similar issue has already been decided in assessee's appeal for the assessment year 2016-17, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. With similar directions, ground no.5 raised in assessee's appeal is allowed for statistical purposes.

71. The issue arising in ground no.6, raised in assessee's appeal pertains to disallowance of rental expenditure under section 40A(3) of the Act. Since a

similar issue has already been decided in assessee's appeal for the assessment year 2016-17, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. As a result, ground no.6 raised in assessee's appeal is allowed.

72. The issue arising in ground no.7, raised in assessee's appeal, pertains to enhancement of income made by the learned CIT(A) by disallowing the expenditure under section 40A(3) of the Act. Since a similar issue has already been decided in assessee's appeal for the assessment year 2016-17, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. With similar directions, ground no.7 raised in assessee's appeal is allowed for statistical purposes.

73. The issue arising in ground no.8, raised in assessee's appeal, pertains to addition under section 68 of the Act on account of amount receivable from banks where appellant-society has maintained their bank accounts.

74. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings from the report of the Special Auditor, it was noticed that the assessee has credited various amounts directly to the reserve and surplus and/or NPA provision accounts. It was further observed that the assessee has maintained bank accounts with various scheduled commercial banks and co-operative banks. Further, it was noticed that the assessee has debited these bank accounts and credited the reserve fund. It was observed that there is a difference in the bank balances as per the books and as per the bank statements. However, the assessee failed to

provide any reason for the difference. It was further observed that the balances as per the books did not reconcile with the balance appearing in the financial statements. On verification of the facts, it was observed that the assessee has passed various entries in the books of accounts, however no such transaction were actually reflected in the bank statements either for the period under consideration or immediately thereafter. It was noticed that the method of debiting bank and corresponding the credit amounts directly to reserve funds is not in accordance with the generally accepted accounting principles. Accordingly, the assessee was asked to explain the rationale and basis of these journal entries and crediting them to the reserves and surplus/NPA provision account. The assessee was also asked to explain as to why the said amount cannot be treated as its income and that if the said amount represents the claim made by the assessee against the bankers, the assessee was requested to explain the accounting treatments undertaken by the assessee when the said amounts were in fact debited by the bankers. In response thereto, the assessee submitted that it is only a book entry without generation of any income, and the society has made a unilateral claim which Axis Bank Ltd has not accepted. Accordingly, the assessee submitted that the same could not be routed through the profit and loss account. The assessee further submitted copies of a FIR against Axis Bank Ltd and Criminal Writ Petition against Axis Bank before the Hon'ble Bombay High Court Bench, Aurangabad.

75. The AO, vide order dated 10/05/2021 passed under section 143(3) of the Act, did not agree with the submissions of the assessee and held that the

assessee has failed to explain the reasons and rationale of crediting the reserve and surplus account. It was further held that since the assessee has failed to explain the nature and source of credit appearing in the books to the satisfaction of the AO, the provisions of section 68 of the Act are clearly applicable in the facts of the present case. The AO held that the cryptic reply of the assessee without any documents does not in any way support the case of the assessee but indicates that the assessee for reasons best known to him intends not to part with the information called for by the AO. Accordingly, the AO made an addition of Rs.48,11,75,861, being the aggregate net amount of credit to reserves and surplus corresponding to the bank accounts under section 68 of the Act. Similarly, the amount of Rs. 4,67,231 credited to reserves and surplus account by debiting the reserves is also added to the total income under section 68 of the Act.

76. In further appeal, the learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that the impact of such entries is that the provision account has been increased while the bank balance has been correspondingly increased. The learned CIT(A) further held that had such an entry being routed through profit and loss account, the entries by way of provisions would not be allowed as a valid deduction. Thus, it was held that the assessee has adopted a circuitous way of enhancing its reserves and provisions without using the profit and loss account. The learned CIT(A) further noted that the assessee though has submitted that it has lodged the FIR and the forensic audit and other proceedings are under way on this issue, and also sought time to furnish additional evidences in support of its

claim, however enough opportunities have been granted to the assessee and there is no reason to agree with such oral averments. Being aggrieved, the assessee is in appeal before us.

77. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee has maintained bank accounts with various banks/branches. It is the case of the assessee that the Axis Bank has debited its accounts without authority and siphoned off its funds. As per the assessee, it has filed Civil Suits against Axis Bank, IDBI Bank, and Federal Bank before the Hon'ble City Civil Court, Ahmednagar, wherein the assessee has claimed that the Bank(s) have debited its account incorrectly either:-

- a. in respect of cancelled cheques,
- b. in respect of cheques not issued by the assessee, or
- c. excess amount debited by the bank.

78. During the hearing, the learned AR submitted that the Axis Bank has reversed certain wrong entries after the civil suit filed by the assessee. The learned AR also furnished the details of such wrong entries reversed by the Axis Bank. It was submitted that for other transactions fraudulently carried out by Axis Bank, Civil Suit is still pending in City Civil Court, and Criminal Writ Petition is pending before the Hon'ble Bombay High Court, Aurangabad Bench. During the hearing, the learned AR referred to the copies of the Civil Suits, as well as the police complaint filed against the Axis Bank, forming part of the paper book. Accordingly, it was submitted that it is only reversal of book entries which would not generate any income, and the claim of the assessee is

only a unilateral claim which the banks have also not accepted till date. We find that the aforesaid documents referred by the learned AR were not considered by the lower authorities and the learned CIT(A) did not grant further opportunity to the assessee to furnish additional evidences in support of its claim. It is also not evident from the record that the lower authorities have examined the submission of the assessee that certain wrong entries have been reversed by the Axis Bank.

77. We may explain the legal principles governing this issue. In the ordinary course, the amounts illegally taken from the bank account of the assessee would be shown in the books of account as "*Amount recoverable from Axis Bank*" in the Assets side of Balance Sheet. When any part or whole of the amount is recovered from the bank, then the above said account would be credited. It is not understandable as to how the assessee has credited "*Reserve account*". It is also not clear as to whether the assessee has claimed any deduction of the amount so illegally embezzled from the bank account. If that be the case, the recovery of part or whole of the amount would be taxable. On the contrary, if the assessee has not claimed any such deduction, then the recovery of part of whole of the amount is not taxable. However, we notice that the assessee has not clearly explained the nature of journal entries passed by it in the books of account, whether it has claimed any deduction of such embezzled amount etc. In the absence of any such details, we are also unable to express any concrete view on this matter.

78. Accordingly, in view of the facts and circumstances as noted in the foregoing paragraph, we deem it appropriate to restore this issue to the file of

the jurisdictional AO for *de novo* adjudication, as per law and in terms of legal principles explained above, after examination of the details filed by the assessee. The assessee shall be at liberty to furnish further documents in support of its claim. The AO is also directed to call for any other information for complete adjudication of this issue. Needless to mention no order shall be passed without affording reasonable and adequate opportunity of hearing to the assessee. With the above directions, the impugned order on this issue is set aside and ground no.8 raised in assessee's appeal is allowed for statistical purposes.

79. The issue arising in ground no.9, raised in assessee's appeal, pertains to disallowance of deduction under section 80P of the Act. Since a similar issue has already been decided in assessee's appeal for the assessment year 2016-17, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. As a result, ground no.9 raised in assessee's appeal is allowed.

80. In the result, the appeal by the assessee is partly allowed, while the appeal by the Revenue is dismissed.

81. To sum up, the appeals by the assessee are partly allowed, while the appeals by the Revenue are dismissed.

Order pronounced in the open Court on 30/07/2024

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 30/07/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

True Copy

By Order

Vijay Pal Singh, (Sr. PS)

Assistant Registrar
ITAT, Mumbai

