**आयकर अपीलीय अधिकरण**
**कोलकाता 'ए' पीठ, कोलकाता में**
**IN THE INCOME TAX APPELLATE TRIBUNAL**
**KOLKATA 'A' BENCH, KOLKATA**

**श्री प्रदीप कुमार चौबे, न्यायिक सदस्य**
**एवं**
**श्री राकेश मिश्रा, लेखा सदस्य**
**के समक्ष**
**Before**
**SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**
**&**
**SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 1886/KOL/2024**
**Assessment Year: 2015-16**

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| Raiganj Central Co-Operative Bank Ltd. | Vs. | D.C.I.T., Circle-2(2), Jalpaiguri |
| ***(Appellant)*** | | ***(Respondent)*** |
| **PAN: AAAAR6191E** | | |

**I.T.A. No.: 1887/KOL/2024**
**Assessment Year: 2017-18**

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| Raiganj Central Co-Operative Bank Ltd. | Vs. | A.C.I.T., Circle-2(2), Jalpaiguri |
| ***(Appellant)*** | | ***(Respondent)*** |
| **PAN: AAAAR6191E** | | |

**I.T.A. No.: 1923/KOL/2024**
**Assessment Year: 2014-15**

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| Raiganj Central Co-Operative Bank Ltd. | Vs. | D.C.I.T., Circle-2(1), Jalpaiguri |
| ***(Appellant)*** | | ***(Respondent)*** |
| **PAN: AAAAR6191E** | | |

**Appearances:**

**Assessee represented by** : N.C. Mondal, CA.

**Department represented by** : Nicholash Murmu, Addl. CIT, DR.

Date of concluding the hearing : February 25th, 2025
Date of pronouncing the order : May 23rd, 2025

## ORDER

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

These appeals filed by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AYs 2015-16, 2017-18 & 2014-15 dated 09.07.2024 & 30.07.2024, respectively which have been passed against the assessment orders u/s 143(3) of the Act. Since most of the issues are common, therefore, all these appeals were taken up together, they were heard together and are being decided vide this common order for the sake of convenience and brevity.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

**I. I.T.A. No.: 1886/KOL/2024; A.Y. 2015-16:**

*"1. THAT on the facts of the case, the order of the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre herein after referred to as the Ld. CIT(A)-NFAC is arbitrary, illegal and bad in law.*

*2. THAT on the facts and circumstances of the case, the Ld. CIT(A)-NFAC has grossly erred in law and not justified by not adjudicating the issue of denying sufficient opportunity to the appellant to produce the necessary documents and information as sought by the Ld. AO*

*3. That on the facts and circumstances of the case, the Ld. CIT (A)-NFAC has grossly erred in law and not justified by upholding the change of Status of the appellant under the Income tax Act, 1961 from "Co-operative Society" to "Domestic Company" disregarding the order of this Hon'ble Court in appellant's own case in A.Y. 2007-08, A.Y. 2009-10 and A.Y. 2010-11 and confirmed by the Hon'ble Jurisdictional High Court, though aforesaid orders were on record.*

*4. THAT on the facts and circumstances of the case, the Ld. CIT (A)-NFAC, has erred in law and not justified by upholding the imposition of dividend distribution tax of Rs.17,23,586/- under section 115-O of the Income Tax Act, 1961 and interest thereon Rs.5,68,783/- under section 115-P of the Act*

*considering the appellant as a Domestic Company instead of Co-operative Society, and also without considering the fact that amount of dividend distribution tax and interest thereon was not claimed in Notice of Demand under section 156 of the Income Tax Act, 1961.*

*5. THAT the Ld. CIT (A)NFAC has grossly erred in law and not justified by confirming the disallowance of Audit Fees of Rs.2,65,506/u/s 40(a)(ia) of the I.T. Act, 1961 and adding the same with returned income without considering the audited statement of accounts, tax audit report, facts and other information on record.*

*6. THAT the Ld. CIT (A)-NFAC, has grossly erred in law and not justified by confirming the disallowance of Vehicles Hiring Charges of Rs. 10,26,687/u/s 40(a)(ia) of the I. T. Act, 1961 and adding the same with returned income without considering the details and explanations submitted, the audited statement of accounts, tax audit report, facts and other information on record.*

*7. THAT the Ld. CIT (A)-NFAC, has grossly erred in law and not justified by confirming the disallowance of Agents Commission of Rs.26,22,351/- u/s 40(a)(ia) of the I. T. Act, 1961 and adding the same with returned income without considering the details and explanations submitted, the audited statement of accounts, tax audit report, facts and other information on record.*

*8. THAT the Ld. CIT (A)-NFAC, has grossly erred in law and not justified by confirming the disallowance of Contingent Expenses of Rs 22,14,801/-u/s 40(a)(ia) of the I. T. Act, 1961 and adding the same with returned income without considering the details and explanations submitted, the audited statement of accounts, tax audit report, facts and other information on record.*

*9. THAT the Ld. CIT (A)-NFAC, has grossly erred in law and not justified by confirming the disallowance of Employees' Contribution to Provident Fund of Rs.16,84,704/- as income u/s 2(24)(x) read with section 36(1)(va) of the Income Tax Act, 1961 and adding the same with returned income.*

*10. THAT the Ld. CIT (A)-NFAC, has grossly erred in law and not justified by not adjudicating the ground of appeal regarding addition of provision for Income Tax of Rs. 1,56,56,307/- which has already been included with return income of Rs.6,58,23,127/- thereby making the said addition of Rs. 1,56,56,307/- as duplicate one.*

*11. THAT the Ld. CIT (A)-NFAC, has grossly erred in law and not justified by confirming the disallowance of provision on standard assets of Rs. 14,61,740/- without considering the prudential norms on Income*

*Recognition, Assets Classification and Provisioning Pertaining to Advances issued by the Reserve Bank of India.*

*12. THAT the Ld. CIT (A)-NFAC, has grossly erred in law and not justified by confirming the disallowance of Donation and Subscription of Rs.40,000/- which has already been included with return income of Rs. 6,58,23,127/- thereby making the said addition as duplicate one.*

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

**II. I.T.A. No.: 1887/KOL/2024; A.Y. 2017-18:**

*"1. THAT on the facts and circumstances of the case, the order of the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi herein after referred to as the Ld. CIT(A)-NFAC is arbitrary, illegal and bad in law.*

*2. THAT on the facts and circumstances of the case, the Ld. CIT(A)-NFAC is grossly erred in law and not justified by dismissing the appeal and confirming the additions without adjudicating the grounds of appeal preferred by the appellant.*

*3. THAT on the facts and circumstances of the case, the Ld. CIT(A)-NFAC is grossly erred in law and not justified by confirming addition of Rs.3,56,325/- being 15% of total other expenses of Rs.23,78,169 consisting of Vehicle Hiring Charges Rs.11,86,339/-, Entertainment Rs.6,49,444/- and Petrol & Mobil Rs.5,42,386/- on estimated basis solely on the basis of suspicion and surmise to prevent revenue loss.*

*4. THAT on the facts and circumstances of the case, the Ld. CIT(A)-NFAC is grossly erred in law and not justified by confirming addition of Rs.90,680/- for donation and subscription on the ground that it is not an allowable expenses under income tax Act without verifying the fact that out of total expenses of Rs.90,680/, the appellant voluntarily added back with net profit a sum of Rs.88,680/- in its computation of income and already included in return of income of Rs.9,66,04,940/- and thereby making the said addition of Rs.88,680/- as duplicate one.*

*5. THAT on the facts and circumstances of the case, the Ld. CIT(A)-NFAC is grossly erred in law and not justified by not adjudicating specific ground of appeal regarding addition of provision for Income Tax of Rs.51,38,438/- thereby confirming the addition without verifying the fact that the said amount was never claimed as deduction in computation of Income from Business or Profession and already included in returned total income of Rs.9,66,04,940/- and thereby making the said addition of Rs.51,38,438/- as duplicate one.*

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

**III. I.T.A. No.: 1923/KOL/2024; A.Y. 2014-15:**

*"1. THAT on the facts of the case, the order of the Ld. Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre herein after referred to as the Ld. CIT(A)-NFAC is arbitrary, illegal and bad in law.*

*2. That on the facts and circumstances of the case, the Ld. CIT (A)-NFAC has grossly erred in law and not justified by upholding the change of Status of the appellant under the Income tax Act, 1961 from "Co-operative Society" to "Banking Company" disregarding the order of this Hon'ble Court in appellant's own case in A.Y. 2007-08, A.Y. 2009-10 and A.Y. 2010-11 and confirmed by the Hon'ble Jurisdictional High Court, though aforesaid orders were on record.*

*3. THAT on the facts and circumstances of the case, the Ld. CIT (A)-NFAC has erred in law and not justified by upholding the imposition of dividend distribution tax of Rs. 12,89,658/- under section 115-O of the Income Tax Act, 1961 and interest thereon Rs.4,25,587/ under section 115-P of the Act considering the appellant as a Domestic Company instead of Co-operative Society, and also without considering the fact that amount of dividend distribution tax and interest thereon was not claimed in Notice of Demand under section 156 of the Income Tax Act, 1961.*

*4. THAT on the facts and circumstances of the case, the Ld. CIT (A)-NFAC has grossly erred in law and not justified by confirming the disallowance of Law Charges of Rs.4,99,738/- u/s 40(a)(ia) of the I. T. Act, 1961 and adding the same with returned income without considering the fact that tax has been deducted wherever applicable and also without considering the audited statement of accounts, tax audit report, facts and other information on record.*

*5. THAT on the facts and circumstances of the case, the Ld. CIT (A)-NFAC has grossly erred in law and not justified by confirming the disallowance of Audit Fees of Rs.6,11,648/u/s 40(a)(ia) of the I. T. Act, 1961 and adding the same with returned income without considering the fact that tax has been deducted wherever applicable and also without considering the audited statement of accounts, tax audit report, facts and other information on record.*

*6. THAT on the facts and circumstances of the case, the Ld. CIT (A)-NFAC has grossly erred in law and not justified by confirming the disallowance of Vehicles Hiring Charges of Rs.9,55,193/- u/s 40(a)(ia) of the I. T. Act, 1961*

*and adding the same with returned income without considering the fact that tax has been deducted wherever applicable and also without considering the audited statement of accounts, tax audit report, facts and other information on record.*

*7. THAT on the facts and circumstances of the case, the Ld. CIT (A)-NFAC has grossly erred in law and not justified by confirming the disallowance of Agents Commission of Rs.23,68,973/u/s 40(a)(ia) of the I. T. Act, 1961 and adding the same with returned income without considering the fact that tax has been deducted wherever applicable and also without considering the audited statement of accounts, tax audit report, facts and other information on record.*

*8. THAT on the facts and circumstances of the case, the Ld. CIT (A)-NFAC has grossly erred in law and not justified by confirming the disallowance of Security expenses of Rs.10,01,650/- u/s 40(a)(ia) of the I. T. Act, 1961 and adding the same with returned income without considering the fact that tax has been deducted wherever applicable and also without considering the audited statement of accounts, tax audit report, facts and other information on record.*

*9. THAT on the facts and circumstances of the case, the Ld. CIT (A)-NFAC has grossly erred in law and not justified by confirming the disallowance of advertisement expenses of Rs.3,47,852/- u/s 40(a)(ia) of the I. T. Act, 1961 and adding the same with returned income without considering the fact that tax has been deducted wherever applicable and also without considering the audited statement of accounts, tax audit report, facts and other information on record.*

*10. THAT on the facts and circumstances of the case, the Ld. CIT (A)-NFAC has grossly erred in law and not justified by confirming the disallowance of Employees' Contribution to Provident Fund of Rs.6,23,893/ as income u/s 2(24)(x) read with section 36(1)(va) of the Income Tax Act, 1961 and adding the same with returned income without considering the fact that due date under the relevant Act includes grace period allowed under the said Act.*

*11. THAT on the facts and circumstances of the case, the Ld. CIT (A)-NFAC has grossly erred in law and not justified by confirming the disallowance of Donation and Subscription of Rs.44000/- as the expenses were in the nature of advertisement in souvenirs, sponsorships, etc. and all of which are incidental and for the purpose of business.*

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

**A. I.T.A. No.: 1923/KOL/2024; A.Y. 2014-15:**

3. We will take up ITA No. 1923/KOL/2024 for AY 2014-15 first as the lead case for adjudication. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2014-15 on 06.12.2014 declaring total income of Rs. 3,61,22,503/-. The case was selected for scrutiny under the Computer-Assisted Scrutiny Selection (CASS) and notices under sections 143(2) and 142(1) of the Act were issued to furnish the reply to the questionnaire and also to produce the books of account of the assessee bank. Subsequently copy of audited statement of accounts of the assessee bank for the relevant financial year and replies on the questionnaire were furnished partly, but the assessee failed to produce the books of accounts. As there was no further compliance, the assessment was completed based on the discussion made in the course of the hearing, verbal & written submissions made and reply to the show cause letter issued to the assessee and the income of the assessee was accordingly assessed at Rs.4,34,96,967/- after making various dissonances. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who vide order dated 30.07.2024 partly allowed the appeal. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. Ground nos. 1 and 12 being general in nature do not require any separate adjudication.

5. Ground nos. 2 and 3 are regarding the Ld. CIT(A) erring in law and not being justified in upholding the change of status of the assessee under the I.T. Act from 'Cooperative Society' to 'Banking Company' disregarding the order of the Tribunal which was not challenged before the Hon'ble Jurisdictional High Court in this regard and has therefore, attained finality in the assessee's own case in AYs 2007-08, 2009-10

and 2010-11 which even though the aforesaid orders were on record. The Assessing Officer (hereinafter referred to as Ld. 'AO') noted that the assessee's turnover during the year was Rs. 53,63,33,479/- and as per the profit and loss account the net profit declared (before tax) was Rs. 2,80,29,227/-. In the immediately preceding AY 2013-14, the assessee's business net profit (before tax) was Rs. 2,59,58,199/- against the business turnover of Rs. 65,67,17,751/- which was @3.95% as against @5.23% in the AY 2014-15. The assessee in his return had claimed the status as 'cooperative bank' and the nature of business activities of the assessee was banking business and hence, according to the Ld. AO the provisions of Part V of the Banking Regulation Act, 1949 were equally applicable to the cooperative banks. Hence, for the purpose of income tax, the cooperative bank has to be treated as a banking company and all provision of the Income Tax Act as applicable to the Banking Company are also applicable to this Co-operative Bank. Therefore, the Status of the assessee bank has been treated as "Banking Company" (Co-operative Bank to be treated as a Non-Scheduled Bank) for the purposes of income-tax.

6. It was submitted before us by the Ld. AR that the issue is covered by the assessee's own case for AYs 2007-08, 2008-09 and 2010-11 and the Revenue had filed the appeal but did not press the order of the Tribunal before the Hon'ble High Court on this issue therefore this issue has become final and the status of the assessee may be treated as cooperative bank. It was submitted before the Ld. CIT(A) that on the face of the assessment order, the status of the appellant was mentioned as cooperative bank under the Income Tax Act, 1961 and there is no status as cooperative bank but the status is of Cooperative Society and the status of the assessee was clearly mentioned as Cooperative Society in

the Income Tax Computation Form and the tax was computed at the rate of tax applicable to a Cooperative Society. So, even the Ld. AO had accepted the status of the appellant as a Cooperative Society and therefore, the provisions of section 115-O of the Act are not applicable. The Ld. CIT(A) examined the provisions of the Companies Act, 1956 (Now, Indian Companies Act, 2013), the Income Tax Act, 1961 and the Banking Regulation Act, 1949. The Ld. CIT(A) went through the submissions of the assessee and concluded that Circular No. 6/2010 [F.NO.173(3)/44/2009-IT(A-I)] dated 20.09.2010 relating to section 80P of the Act and also the decision of the Hon'ble Supreme Court in the case of **Shree Choudhary Transport Co. vs Income Tax Officer in Civil Appeal No. 7865 of 2009** and has very cryptically mentioned that *"In view of the above, it is mandatory for the appellant to pay dividend Distribution Tax as per provisions of section 115-O of the Income-tax Act, 1961. Hence, these grounds of appeal adduced by the appellant are not upheld."*

7. In the paper book filed before us, the assessee has enclosed a copy of the common order in **ITA No. 895/KOL/2012 for AY 2007-08** and **ITA No. 49/KOL/2013 for AY 2009-10** dated 07.04.2015 of 'C' Bench, ITAT, Kolkata wherein it has been held as under in para 3:

> *"3. We have heard rival submissions and gone through facts and circumstances of the case. Now, before us, Ld. Counsel for the assessee could not demonstrate how the assessee's status is that of Cooperative Society instead of Company. Ld. Counsel for the assessee stated that in the original assessment framed u/s 143(3) of the Act vide order dated 07.08.2006, wherein assessee is assessed as cooperative society. We have gone through the original assessment order framed u/s 143(3) of the Act dated 07.08.2006 wherein the status of the assessee was assessed as cooperative society. We have also gone through the impugned assessment order framed by AO u/s 147 read with section 143(3) of the Act wherein the status of the assessee is taken as company without any basis. Change of status is not permissible under the law unless and until a cogent reasoned order is passed on the same. Here, the assessee's change of*

*status from a cooperative society to company is without any basis. Hence, we restore the status of the assessee as cooperative society and this issue of assessee's appeal is allowed."*

8. Similarly, in AY 2010-11 the assessee also relied upon the assessee's appeal for AY 2007-08 and AY 2009-10 in **ITAT No. 162 of 2015,** and the judgment of the Hon'ble Jurisdictional High Court dated 17.04.2017 wherein the issue of change in status has been decided in favour of the assessee and the relevant para of the order is as under:

*"Alter hearing rival contentions, we find that the assesse's appeal is covered in favour of the assessee and against the Revenue by the decision of the Hon'ble Jurisdictional High Court in the assessee's own case for the Assessment Year 2007-08 and Assessment Year 2009-10 in ITAT No. 162 of 2015, Judgement 17/04/2017, where in the Hon'ble High Court confirmed the order of the Tribunal dt. 07/04/2015 in ITA. No. 895/Kol/2012 for the Assessment Year 2007-08 & ITA. No. 149/Kol/2013, for the Assessment Year 2009-10, wherein it was held that the there is no basis for the Assessing Officer to change status of the assessee from a co-operative society to a company"*

9. Since the issue is decided in favour of the assessee by the order of the Coordinate Benches of the Tribunal in AYs 2007-08, 2009-10 and 2010-11, therefore, following the order of the coordinate benches, the change of status of the assessee from cooperative Society to cooperative bank is held to be not justified. The order of the Hon'ble High Court of Calcutta has also been enclosed from pages 19 to 25 of the paper book in which the order of the Hon'ble Tribunal has been upheld as the Department had only pressed the question nos. 1 and 2 for being answered on admission of the appeal which related to rectification u/s 154 of the Act and deleting the disallowance made u/s 154 of the Act. Therefore, as regards the change of status of the assessee from a cooperative Society to a cooperative bank, the same was allowed by the Tribunal in favour of the assessee and the same was not contested

before the Hon'ble High Court and has reached finality. Hence Ground No. 2 of the appeal is allowed.

10. The dividend distribution tax u/s 115-O of the Act and interest u/s 115P of the Act is applicable only to a domestic company and since the assessee is not a domestic company therefore, there was no liability for levying of any dividend distribution tax u/s 115-O of the Act and consequential interest u/s 115P of the Act. Thus, Ground No. 3 is also allowed in favour of the assessee, more so when the same has been allowed in favour of the assessee by the coordinate bench of the Tribunal A.Y. 2010-11.

11. Ground nos. 4 to 9 are regarding the Ld. AO making disallowance u/s 40(a)(ia) of the Act for non-submission of bills/vouchers, ledger copy, proof of filing of e-TDS returns/statement etc. which are mentioned as under:

i) Ground no. 4 is related to disallowance of Law Charges Rs.4,99,738/- u/s 40(a)(ia) for non-deduction of tax at source u/s 194J of the Act.

ii) Ground no. 5 is related to disallowance of Audit Fees Rs. 6,11,648/- u/s 40(a)(ia) for non-deduction of tax at source u/s 194J of the Act.

iii) Ground no. 6 is related to disallowance of Vehicles Hire Charges Rs.9,55,193/- u/s 40(a)(ia) for non-deduction of tax at source u/s 194C of the Act.

iv) Ground no. 7 is related to disallowance of Agent's Commission Rs.23,68,973/- u/s 40(a)(ia) for non-deduction of tax at source u/s 194C of the Act.

v) Ground no. 8 is related to disallowance of Security Charges Rs.10,01,650/- u/s 40(a)(ia) for non-deduction of tax at source u/s 194C of the Act.

vi) Ground no. 9 is related to disallowance of Advertisement Expenses Rs.3,47,852/- u/s 40(a)(ia) for non-deduction of tax at source u/s 194C of the Act.

12. The issue has been discussed by the Ld. CIT(A) from pages 47 to 87 of the appeal order in which reliance has been placed on the decision of the Hon'ble Apex Court in **Shree Choudhary Transport Co. vs Income Tax Officer** in **Civil Appeal No. 7865 of 2009** order dated 29th July, 2020 which relates to disallowance of expenses for non-deduction of tax. It is concluded that in view of the factual matrix of the case at hand and the judicial precedent cited above, these grounds of appeal adduced by the appellant are not upheld. However, no justification has been given as to why the disallowance in the case of the assessee is required to be confirmed.

13. Before us, the assessee submitted in this regard that the Ld. AO had disallowed various expenses incurred by the appellant for not submitting the confirmations of TDS returns filed in Form No. 26Q. it is stated that demonetisation of Specified Bank Notes was declared on 08-11-2016 and all employees became very much busy to contain the sudden work load which had increased. The date of hearing was fixed on 16-11-20116 but due to events beyond the control of the appellant and the work pressure, the requisite documents could not be submitted at that time. However, the accounts of the appellant for the A.Y. 2014-15 were subjected to tax audit u/s 44AB of the Act. The appellant had duly filed tax audit reports for the year and the same were in possession of the Ld. AO In the Tax Audit report, Clause 34(b), the dates of filing

TDS returns/statement were clearly given and in clause No.21(b)(ii) it was also reported that there is nothing which can be added back u/s 40(a)(ia) due to non-deduction of TDS. The Ld. AO disregarded the Tax Audit Report without assigning any reason though he has not rejected the books of account or the tax audit reports u/s 44AB but disallowed the expenses u/s 40(a)(ia) of the Act for the entire amount under those heads of expense on the basis of suspicion. The appellant had filed its written submission before the Ld. CIT(A) and explained that the disallowance u/s 40(a)(ia) made by the Ld. AO was wrong as the appellant had made TDS and deposited the TDS so deducted to the credit of the Central Government. Since, the relevant file relating to TDS matters was misplaced and was not readily available, the appellant downloaded "TDS Statement in Form-26 Filing Status" from TRACES portal and submitted before him. In addition to that, the appellant submitted i) a Statement of Name, PAN, amount paid/credited, TDS made (Paper Book Page No. 52) ii) Extract of General Ledger of all disputed accounts (Paper Book Page No. 53 to 76) for AY 2014-15 for his consideration in this matter. In adjudicating the issue relating to the disallowance u/s 40(a)(ia) of the Act for the A.Y. 2014-15, the Ld. CIT(A) cited the decision of the Hon'ble Apex Court in Shree Choudhary Transport Co. vs Income Tax Officer on 29 July, 2020 (Page Nos. 47 to 87 of the Order u/s 250 for A.Y. 2014-15). It is submitted that the decision of **Shree Choudhary Transport Co. vs Income Tax Officer (supra)** has no relevance here. In a nutshell, the said decision was whether TDS u/s 194C of the Act is applicable for transport charges paid to the transporter or not. It was held that TDS u/s 194C of the Act is applicable for such payment but the issue here is not the applicability of TDS. The appellant is not challenging the applicability of TDS under the Act but the issue here is that the appellant had made TDS and

deposited to the credit of Central Government and filed TDS returns in Form-26Q. So, the question of disallowing entire amount u/s 40(a)(ia) of the Act does not arise at all but the Ld. CIT(A) dismissed the grounds of appeal simply by observing that *"In view of the factual matrix of the case at hand and the judicial precedent cited above, these grounds of appeal adduced by the appellant are not upheld."* It is also submitted that the appellant has submitted necessary evidence to substantiate that it had deducted tax at source under various section of the Income Tax Act, 1961 and deposited the tax so deducted to the credit of the Central Government; and filed the TDS returns in Form-26 but the Ld. CIT(A) without considering the above documents, simply dismissed the grounds of appeal which is illegal and against natural justice. The assessee has prayed that the additions made u/s 40(a)(ia) of the Act be deleted as the assessee has deducted tax at source wherever applicable and complied with the other provisions of the TDS under the Act.

14. We have considered the submission made. The assessee submitted before us in the course of appeal that on account of demonetization and the assessment proceeding being done in AY 2016-17 and due to lot of work, the assessee could not reply to the Assessing Officer. It was submitted that the assessee has sufficient evidence to justify that either the tax was not deductible or wherever required it was duly deposited in time. The assessee requested that the matter may be remitted to the Ld. AO to verify. We have considered the submissions made. In view of the written submission filed, the order of the Ld. CIT(A) in respect of confirmation of all these disallowances is their way set aside and the issue is remitted to the Ld. AO, who shall verify the evidences filed by the assessee that either TDS was not deductible or wherever deductible the same has been paid to the credit of the Central

Government and thereafter, wherever required, the disallowances should be made u/s 40(a)(ia) of the Act. These grounds of appeal are, therefore, allowed for statistical purposes.

15. Ground no. 10 relates to non-deduction of employees' contribution to Provident Fund of Rs. 6,23,893/- as income u/s 2(24)(x) r.w.s. 36(1)(va) of the Act and which has been added to the returned income without considering the fact that the due date under the relevant Act includes grace period allowed under the said Act. Before the Ld. CIT(A), the assessee relied upon the decision of the Hon'ble Calcutta High Court in its own case pertaining to AY 2007-08 to AY 2009-10 which has been reproduced in the order of the Ld. CIT(A) but which is illegible. The Ld. CIT(A) has upheld the ground of appeal adduced by the appellant in relation to section 36(1)(va) of the Act as the appellant was engaged in the business of banking and was treated as a non-schedule bank.

16. Before us, it has been submitted that the employees' contribution to Provident Fund amounting to Rs.6,23,893/- was not deposited within the due date as required u/s 36(1)(va) of the Act and was treated as the income u/s 2(24)(x) of the Act. The assessee has submitted that the appellant could not deposit the employees' share of contribution to Provident Fund within the due date under the relevant Act for August, 2013 for Rs.3,21,280/- (due date 15-09-2013) and for February, 2014 for Rs.3,02,613/- (due date 15-03-2014) totalling Rs.6,23,893/- for A.Y. 2014-15 but the contribution for February, 2014 Rs.3,02,613/- was deposited on 18-03-2014 i.e. within the grace period of 5 days allowed under the relevant Act. The details were given in the appellant's written submission to the Ld. CIT (A). From the details submitted and the Tax Audit Report, it was very much evident that though there was a delay

in depositing the employees' contribution within the due date under the relevant Act in some months but the amounts were deposited within the grace period of 5 days allowed under the said relevant Act which ought to have been allowed as a deduction u/s 36(1)(va) of the Act. Application of grace period of 5 days was available up to December, 2015 and was withdrawn with effect from February, 2016 for depositing contributions for the month of January, 2016 which is payable in the month of February, 2016. Out of the total disallowance of Rs.6,23,893/- for the A.Y. 2014-15, the appellant deposited Rs.3,02,613/- within the grace period allowed under the relevant Act. Those amounts deposited within the grace period of the relevant Act ought to have been allowed as a deduction u/s 36(1)(va) of the Act. The assessee has relied upon the decision in the case of **Hunsur Plywood Works Ltd. vs Deputy Commissioner of Income-Tax (1995) 54 ITD 394 (Bang-Trib)** dated on 21st March, 1995 wherein the Hon'ble Tribunal has held:

> *"Hence, we ultimately hold that from practical point of view, the five days' period of grace after 15th of the succeeding month is to be considered merely as an extension of the early 15 days and all the consequences of making payment within the said 15 days should be considered to follow if the payment be made within the grace period following the said period of 15 days.*
>
> *In the instant case, inasmuch as the assessee has actually made the payment within such date, we hold that the assessee should get the benefit of deduction of the amount under Clause (va) of Section 36(1). In that view, we reverse the actions of the lower authorities and direct that the entire amount of Rs. 1,49,061/- being deductible under Section 36(1)(va) be deleted from the addition as made in the assessment."*

It is submitted that the Ld. CIT(A) has not adjudicated this ground of appeal at all. In the above mentioned facts and circumstances, the appellant has requested to delete the additions as per the ratio laid

down in Hunsur Plywood Works Ltd. vs Deputy Commissioner of Income-Tax(supra).

17. The Ld. DR insisted that the disallowances made by the Ld. AO as confirmed by the Ld. CIT(A) may be upheld.

18. We have considered the submissions made. The assessee has also filed a copy of the Circular of the Regional Provident Fund Commissioner Circular No.C/MD/Apply/Genl/64 dated 28.04.1964 and amended another Circular of 24.10.1973 in support of the claim that grace period of 5 days will be allowed to the employer for payment of provident fund contributions of the employees and no damages will be levied for remittances made before 20th of the following month and for delays up to 15 days including the 5 days of grace period, damages at half the rates laid down in this office circular cited, would be levied. Since the authority concerned itself had allowed the grace period of 5 days, which was available up to December, 2015 and has been withdrawn with effect from February, 2016 for depositing employees' contributions for the month of January, 2016 payable in the month of February, 2016, the assessee has submitted that out of the total disallowance of Rs.6,23,893/-, the appellant deposited Rs.3,02,613/- within the grace period allowed under the relevant Act, therefore, these amounts deposited within the grace period ought to have been allowed as a deduction u/s 36(1)(va) of the Act. The assessee has relied upon the decision of **Hunsur Plywood Works Ltd. (supra)** in support of the claim that all the consequences of making payment within the said 15 days should be considered to follow if the payment is made within the grace period following the said period of 15 days.

19. We have considered the submissions made. Since the concerned authority of Employees' Provident Fund had extended the due date and

allowed a grace period of 5 days which was available up to December, 2015, therefore, on this issue also, the order of the Ld. CIT(A) is hereby set aside and the matter is remitted back to the Ld. AO to verify the amount paid within the grace period and delete the same and the rest of the addition made shall be upheld. The assessee shall file a copy of the challans before the Ld. AO in support of the claim that the amounts were paid within the grace period. In view of the decision of the Hon'ble Supreme Court in the case of **Checkmate Services (P) Ltd. Vs Commissioner of Income Tax-1, [2022] 143 taxmann.com 178 (SC)/448 ITR 518 (SC),** the rest of the amount shall remain confirmed. Hence, this ground of appeal is partly allowed.

20. Ground no. 11 is relating to the Ld. CIT(A) erring in law and not being justified in confirming the disallowance of Donation and Subscription of Rs. 44,000/- as the expenses were in the nature of advertisement in souvenirs, sponsorships etc., all of which were incidental to and for the purpose of business. The Ld. AO made the disallowance as a sum of Rs. 44,000/- was debited under the head 'other expenditure as donation and subscription' which is not allowable as a business expenditure as per the provisions of the Act and the same are disallowed. Before the Ld. CIT(A) as well, the assessee had uploaded the ledger copy of the donation and the subscription account for the FY 2013-14 relevant to AY 2014-15 and it is submitted that it would be seen from the ledger copy that most of the expenses were small in nature and paid for development of sports organized by appellant's customers as well as were in the nature of advertisement. The expenses were incurred for the development of business as well and were incidental to and for the purpose of business and therefore, allowable u/s 37 of the Act. The Ld. CIT(A) did not uphold this ground of appeal

as the assessee had not furnished any proof or evidence of the same being for the purpose of the business. Before us as well, though a written submission has been filed in this regard but no evidence has been filed in support of the claim that the expenditure made was for the purpose of business. Moreover, the assessee did not press this ground of appeal in the course of the hearing before us. Hence, the addition made by the Ld. AO is hereby confirmed.

21. In the result, the appeal for A.Y. 2014-15 is partly allowed for statistical purposes.

**B. I.T.A. No.: 1886/KOL/2024; A.Y. 2015-16:**

22. Now, we will take up the appeal for A.Y. 2015-16.

23. Ground Nos. 1, 2 and 13 are general in nature and do not require any separate adjudication.

24. Ground Nos. 3 and 4 are allowed in view of the finding in paras 9 and Form No. 10 respectively on these issues as the facts are identical and the status of the assessee shall be a cooperative society and not a cooperative bank and no dividend distribution tax under section 115–O and interest under section 115P of the Act shall be charged.

25. As regards Ground Nos. 5 to 8, in view of the finding in para 14 relating to A.Y. 2014-15, the order of the Ld. CIT(A) is hereby set aside and the issue is restored to the Ld. AO for verification of TDS made or non-applicability of the same and the decision in A.Y. 2014-15 shall *mutatis mutandis* apply for A.Y. 2015-16 as well. Hence, these grounds of appeal are allowed for statistical purposes.

26. Ground No. 9 is also allowed for statistical purposes in view of the finding in para 19 and the decision in A.Y. 2014-15 shall mutatis

mutandis apply for A.Y. 2015-16 as well. The Ld. AO is directed to allow the required relief after the assessee furnishes necessary evidence for the claim made.

27. As regards Ground no. 10 for AY 2015-16 relating to addition for provision for income tax for Rs.1,56,56,307/- being a duplicate addition, the assessee has submitted that the appellant had given detailed submission to the Ld. CIT(A) in this regard. The appellant had also enclosed the computation of total income for the A.Y. 2015-16 but the Ld. CIT(A) has not adjudicated this ground of appeal. The Ld. AO added back a sum of Rs.1,56,56,307/- with the returned income of Rs.6,58,23,127/- on the ground that "*the appellant had debited a sum of Rs.1,56,56,307/- as provision for Income Tax under the head "Other Expenditure". As a matter of fact, the provision for any kind of expenditure is not allowable under the provision of the Act (Income Tax Act, 1961), since this mere provision and the amount has actually not been spent or incurred.*" It is stated that the observation of the Ld. AO is totally incorrect. The Ld. AO had only verified the Profit & Loss Account but not the vital documents-ITR-5 filed by the appellant for the A.Y. 2015-16. In the Profit & Loss Account, the net profit was Rs.3,75,63,425.56 i.e. net profit after tax. In ITR-5, Part-A P & L Sl. No. 46, the Profit before tax was mentioned as Rs.5,32,19,733/- and in Sl. No. 47 the Provision for Current Tax was Rs.1,56,56,307/- and in Sl. No. 49 Profit after tax was Rs.3,75,63,426/-. In ITR-5, the Computation of Income from Business or profession was started with net profit before tax Rs.5,32,19,733/- and after some other adjustment, returned income was arrived at Rs.6,58,23,127/-, Since the Ld. AO started his computation of total income with the income disclosed as per the return being Rs.6,58,23,127/- which include Provision for Income Tax of Rs.

1,56,56,307/-, the question of any further adjustment for the Provision for Income Tax of Rs.1,56,56,307/- does not arise. The said addition of Rs.1,56,56,307/- is a duplicate one and is required to be deleted.

23. Since this issue has not been adjudicated upon by the Ld. CIT(A), therefore, the Ld. AO is directed to verify whether the assessee had itself made the disallowance for computing the income and if it is so, then the duplicate addition should be deleted. Hence, this ground of appeal is allowed for statistical purposes since provision made for income tax was already disallowed by the assessee as it is not an allowable expenditure. Ground No. 10 is allowed for statistical purposes.

24. In Ground no. 11 for AY 2015-16 for disallowance of provision on standard assets of Rs. 14,61,741/-, the assessee has submitted that the appellant is engaged in the business of banking and holding license from Reserve Bank of India. The appellant is a non-scheduled bank and provisions of section 36(1)(viia) is applicable to the appellant. During the year, the appellant debited in its Profit and Loss Account the aforesaid sum of Rs.14,61,740/- complying with the norms of Income Recognition, Assets Classification and Provisioning pertaining to Advances norms issued by the Reserve Bank of India. The said guidelines issued by the Reserve Bank of India are mandatory in nature and the appellant has to adhere to them. It is submitted that the said amount is deductible u/s 36(1)(viia) of the Act as Provision for Bad & Doubtful Debts and the claim of the appellant is within the limit fixed u/s 36(1)(viia) of the Act. But the Ld. AO failed to appreciate this fact and added the said amount of Rs. 14,61,74/- with the returned income. Provision on standard assets of Rs.14,61,740/- is said to be eligible for deduction u/s 36(1)(viia) of the Act as provision for bad and doubtful

debts and as such the said addition is wrong and requires to be deleted. Reliance in this regard has been placed on the following decisions:

> *i) ACIT, Khandwa vs. M/s. Jila Sahakari Kendriya Bank, Khandwa Road, Khargone ITA No.455/Ind/2018 Assessment Year: 2014-15 (ITAT-Indore).*
>
> *ii) The State Bank of India (Successor to State Bank of Patiala) vs. Asst. CIT Circle-Patiala, ITA No. 510/CHANDI/2017 AY 2013-14 & ITA No. 538/CHANDI/2017 A.Y. 2014-15 & ITA No.1259/CHANDI/2017 A.Y. 2015-16 (ITAT-MUMBAI)*

26. We have considered the submission of the assessee. The Bench was of the view that the Ld. CIT(A) has not adjudicated this issue and therefore, the same maybe remitted to the Ld. AO to verify and delete the addition if the provisions on standard assets is eligible for deduction u/s 36(1)(viia) of the Act as per the RBI guidelines and the provisions of the Act and the judicial pronouncements relied upon as the assessee is to be treated as a non-scheduled bank though its status is of a cooperative society. Hence this Ground No. 11 of the appeal is allowed for statistical purposes.

27. Ground No. 12 is relating to a sum of Rs. 40,000/- claimed as donation and subscription but the assessee had already added back the amount in the computation of total income of Rs. 6,58,23,126/- and the said addition of Rs. 40,000/- was duplicate one and required to be deleted. The Ld. CIT(A) in this regard has not adjudicated this issue. The same has been decided against the assessee vide para 20 in the appeal for A.Y. 2014-15 which finding shall *mutatis mutandis* apply for A.Y. 2015-16 as well. However, the assessee contends that it is double addition as the assessee had itself included the sum in the computation of income, therefore, this issue is remitted back to the Ld. AO to verify computation of income made by the assessee and if the assessee has

itself made the disallowance, delete the addition as double addition cannot be made for the same. This ground of appeal is allowed for statistical purposes.

28. In the result the appeal for A.Y. 2015-16 is partly allowed for statistical purposes.

**C. I.T.A. No.: 1887/KOL/2024; A.Y. 2017-18:**

29. Ground nos. 1, 2 and 6 being general in nature do not require any separate adjudication.

28. Ground no. 3 is regarding the Ld. CIT(A) confirming the addition of Rs. 3,56,725/- being 15% of the total amount of Rs. 23,78,169/- consisting of Vehicles Hire Charges Rs. 11,86,339/-, Petrol & Mobile Expenses Rs.5,42,386/- and Entertainment Rs.6,49,444/- on estimated basis for non-business purposes. It was submitted before us that the Ld. AO made the disallowance as the assessee had not produced the supporting bills and vouchers, in the absence of which the genuineness of the expenses could not be verified and the possibility of claiming excessive expenses on the basis of internally maintained vouchers could not be ruled out. The Ld. AR submitted before us that the Ld. AO disallowed 15% of Vehicles Hire Charges Rs. 11,86,339/-, Petrol & Mobile Expenses Rs.5,42,386/- and Entertainment Rs.6,49,444/-. The appellant had made a detailed submission before the Ld. CIT(A) but this ground also was not adjudicated by him. The Ld. AO had added back the same on the basis of suspicion and surmises and there was no material on record to prove that the appellant had made self-made vouchers to evade tax. The Ld. AO had not rejected the books of account and the addition on the basis of estimation is arbitrary and bad in law and require to be deleted. Reliance in this regard is

placed on the decisions of the Hon'ble ITAT, Ahmedabad in the case of **Samir Kishore Parekh, Ahmedabad vs. The ACIT, Circle-5(3)(2), Ahmedabad, ITA Nos.265 & 266/Ahd/2020 (Date of Order 22-06-2022)**.

29. Before us, no further submission in this regard was made except for stating that the expenditure being for the purpose of business was allowable. However, the claim of expenditure u/s 37(1) of the Act needs to be supported by primary documents which are the bills and vouchers and since the assessee could not produce the same before the Ld. AO therefore, the same was partly disallowed. However, we find that the disallowance of expenditure is excessive and the same is reduced to 10% from 15% made by the Ld. AO with consequential relief to the assessee. Hence, Ground No. 3 of the appeal is partly allowed.

30. Ground No. 4 is regarding donation and subscription of Rs.90680/- added by the Ld. AO. It is stated that the assessee had already added back the amount of Rs.88,680/- in the computation of total income of Rs. 9,66,04,937/- and the said addition of Rs. 90680/- is a duplicate one and is required to be deleted as the balance amount of Rs.2,000/- was allowable under section 37 of the Act. The order of the Ld. CIT(A) in this regard has not adjudicated this issue therefore, this issue is remitted back to the Ld. AO to verify the computation of income made by the assessee and if the assessee has itself made the disallowance, delete the addition as double addition cannot be made for the same. As regards the balance sum of Rs. 2,000/-, the assessee has not established how the same was allowable u/s 37 of the Act, hence the addition to this extent is confirmed and Ground No. 4 is allowed for statistical purposes.

31. Ground No. 5 is regarding addition of Rs. 51,38,438/- on account of provision for Income Tax which is not adjudicated upon by the Ld. CIT(A). The assessee claims that the same is already included in the computation of income in the returned total income of Rs.9,66,04,940/- and the addition made by the Ld. AO is a duplicate one and the issue was not adjudicated upon by the Ld. CIT(A).

32. We have considered the submission made. Similar issue has arisen in Ground No. 10 of A.Y. 2015-16 and as per the findings in para 23, the Ld. AO is directed to verify and delete the addition if the assessee has already added the amount in the computation of income as double addition made is not justified and the issue was not adjudicated by the Ld. CIT(A). Hence, Ground No. 5 is allowed for statistical purposes.

33. In the result, the appeal for A.Y. 2017-18 is partly allowed for statistical purposes.

30. In the result, the appeals filed by the assessee for all the assessment years are partly allowed for statistical purposes.

**Order pronounced in the open Court on 23rd May, 2025.**

| | |
|---|---|
| *Sd/-* | *Sd/-* |
| [**Pradip Kumar Choubey**] | [**Rakesh Mishra**] |
| Judicial Member | Accountant Member |

Dated: 23.05.2025

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. ***Raiganj Central Co-Operative Bank Ltd., Ukilpara, P.O.-Raiganj, Uttar Dinajpur, West Bengal, 733134.***
2. ***D.C.I.T., Circle-2(2), Jalpaiguri.***
3. ***A.C.I.T., Circle-2(2), Jalpaiguri.***
4. ***D.C.I.T., Circle-2(1), Jalpaiguri.***
5. CIT(A)-NFAC, Delhi.
6. CIT-
7. CIT(DR), Kolkata Benches, Kolkata.
8. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata