

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

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 362/KOL/2025
Assessment Year: 2011-2012**

***The Bank Employees Cooperative Bank
Limited,.....Appellant
23A, Netaji Subhas Road,
Kolkata-700001
[PAN:AABAT5298D]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle-36, Kolkata,
Aayakar Bhawan Poorva,
110, Shantipally, Kolkata-700107***

Appearances by:

*Shri Sanbarta Koley, FCA, appeared on behalf of the
assessee*

*Ms. Archana Gupta, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

**Date of concluding the hearing: August 07, 2025
Date of pronouncing the order: October 31, 2025**

O R D E R

Per Duvvuru RL Reddy, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 20th December, 2024 passed for assessment year 2011-12.

2. Brief facts of the case are that the appellant-assessee filed its return of income electronically for the assessment year 2011-12 on 28.09.2011 declaring total income of Rs.1,72,91,888/-. The return was duly processed under section 143(1) and subsequently selected for scrutiny assessment through CASS. Notice under section 142(1) was issued on 18.09.2012. The case was assessed under section 143(3) of the Act at an assessed income of Rs.2,65,06,890/- on 04.03.2014 and served to the assessee. With regard to the contribution to provident fund of Rs.8,09,272/-, the ld. Assessing Officer disallowed this amount on the ground that the amount was not deposited in the recognized Provident Fund complying the provisions of section 40A(9) read with section 36(1)(v) of the Act, while the assessee submitted that the Bank was incorporated under West Bengal Cooperative Societies Act and as per section 83 of West Bengal Cooperative Societies Act, 2006 are not covered under the employees PF and Miscellaneous provision Act, 1952. Regarding interest Paid on Members' Welfare Fund, ld. Assessing Officer added the amount of Rs.25,20,700/- to the total income along with initiation of penalty proceeding under section 271(1)(c) of the Act for furnishing inaccurate particulars of income as the amount of interest earned on Members Welfare Fund was shown as income and as a matching concept of Generally Accepted Accounting Principle Corresponding Expenses has been shown in the books is factually not correct and unacceptable. Finally, ld. Assessing Officer completed the assessment at Rs.2,65,06,890/- making additions of Rs.92,15,002/- to the returned income. On being aggrieved, the assessee preferred an appeal before the ld.

CIT(Appeals). The Id. CIT(Appeals) partly allowed the appeal of the assessee saying that with regard to the contribution to provident fund of Rs.8,09,272/-, the Id. CIT(Appeals) upheld the order of Id. Assessing Officer saying that the Id. Assessing Officer was correct in levying penalty to the disallowance of Rs.8,09,272/-. With regard to the interest paid on Members' Welfare Fund amounting to Rs.25,20,700/-, the Id. CIT(Appeals) deleted the disallowance as made by the Id. Assessing Officer. On being aggrieved, the assessee preferred an appeal before the ITAT.

3. We have heard both the sides. The assessee raised an additional ground of appeal before the ITAT, which reads as under:-

“That on the facts and in the circumstances of the case, the penalty order passed by the learned Assessing Officer is bad in law and liable to be quashed, as it was passed without granting the appellant an opportunity of hearing despite a written request to keep the penalty proceedings in abeyance pending the disposal of the appeal against the quantum addition, and, therefore, the said order is in violation of the principles of natural justice”.

4. Shri Soumik Paul, Manager of the Assessee-Cooperative Bank filed a written submission before the Bench, which reads as under:-

1. *That the above appeal is pending before the Hon'ble ITAT against the order of the Ld. CIT(A) passed on 20th December 2024 with respect to penalty under section 271(1)(c).*
2. *That during the course of preparation for the hearing of the appeal, the Appellant, upon consultation with legal and tax advisors, has come to know certain legal issues which go to the root of the matter and were not raised in the original grounds of appeal filed before this Hon'ble Tribunal.*

3. *That during the course of penalty proceedings, the Appellant had specifically requested the learned Assessing Officer to keep the penalty proceedings in abeyance until the disposal of the appeal, which was pending before the appellate Authority at the relevant time.*
4. *That despite the above request, the learned Assessing Officer proceeded to impose the penalty without granting any opportunity of hearing or allowing the Appellant to make submissions in support of its case.*
5. *That the penalty proceedings is a quasi-judicial proceeding and the Assessee must be given a reasonable opportunity of being heard for end of natural justice.*
6. *That the action of the learned Assessing Officer in proceeding with the penalty in such manner is in gross violation of the principles of natural justice, as the Appellant was denied an effective opportunity to present its case.*
7. *That the non-inclusion of these grounds earlier was neither willful nor deliberate but due to bona fide oversight.*
8. *That in the interest of justice and equity, the Appellant prays for admission of the following additional grounds of appeal:*

Additional Ground of Appeal:

"That on the facts and in the circumstances of the case, the penalty order passed by the learned Assessing Officer is bad in law and liable to be quashed, as it was passed without granting the Appellant an opportunity of hearing despite a written request to keep the penalty proceedings in abeyance pending the disposal of the appeal against the quantum addition, and therefore, the said order is in violation of the principles of natural justice."

That the application is made bona-fide and end of justice.

Under the above circumstances, it is prayed before your Honour that your honour would be graciously pleased to admit the additional ground of appeal as stated above and pass such other order or orders as your honour may deem fit and proper.

And for this act of kindness, your petitioner as in duty bound shall ever pray.

5. It was the submission of the ld. Counsel for the assessee that the assessee has raised additional ground before the Tribunal and pleaded to admit the additional ground raised by the assessee.

6. On the other hand, ld. Departmental Representative submitted that the assessee has not given any valid reason. When he has not raised the additional ground before the lower authorities, it requires verification of certain facts, therefore, he pleaded not to admit the additional ground raised by the assessee.

7. We have heard both the sides and perused the material available on record. The assessee has raised additional ground before the Tribunal just explaining that due to oversight, he has not raised this ground before the lower authorities. Therefore, considering the facts and circumstances of the case, we are of the view that it is a fit case to admit the additional ground raised by the assessee and we remit the matter back to the file of ld. CIT(Appeals) to examine the additional ground raised before the Tribunal and adjudicate the matter afresh after giving opportunity of being heard to the assessee, since certain facts require verification as contended by the ld. D.R. Therefore, we set aside the order passed by the ld. CIT(Appeals) and remit the matter back to the file of ld. CIT(Appeals) to examine this issue since it requires verification of certain facts, with a direction to adjudicate the matter afresh on merits after being opportunity of being heard. The assessee is also directed to cooperate with the proceedings before the ld. CIT(Appeals). Hence, the grounds raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 31/10/2025.

Sd/-
(Rajesh Kumar)
Accountant Member

Sd/-
(Duvvuru RL Reddy)
Vice-President

Kolkata, the 31st day of October, 2025

*Copies to :(1) The Bank Employees Cooperative Bank
Limited,
23A, Netaji Subhas Road, Kolkata-700001*

*(2) Deputy Commissioner of Income Tax,
Circle-36, Kolkata,
Aayakar Bhawan Poorva,
110, Shantipally, Kolkata-700107*

*(3) CIT(Appeals), NFAC, Delhi;
(4) CIT - ;
(5) The Departmental Representative;
(6) Guard File
TRUE COPY*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.