

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

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. Nos.214 & 215/Lkw/2017
Assessment Years:2008-09 & 09-10

&

I.T.A. No.123/Lkw/2016
Assessment Year: 2011-12

U.P. Civil Secretariat Primary Cooperative Bank Limited, Vidhan Bhawan, Hazaratganj, Lucknow-226001	Vs.	Addl. CIT (TDS), Lucknow
(Appellant)		(Respondent)

Appellant by	Shri Akshay Agarwal, Advocate
Respondent by	Shri Amit Kumar, Addl. CIT (D.R.)

ORDER

PER BENCH:

(A) These three appeals have been filed by the assessee against impugned appellate orders dated 17/01/2017 for assessment years 2008-09 & 09-10 and dated 18/11/2015 for assessment year 2011-12 respectively of Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. The grounds of appeal raised by the assessee are as under:

I.T.A. No.214/Lkw/2017

- 1.1 *Because the learned 1st appellate authority erred in up-holding the order of A.O. u/s 201 & 201(1A) of the IT Act, 1961.*
- 1.2 *Because the finding of the learned 1st appellate authority that in the absence of FOR day book which were impounded and were in the custody of DCIT, Range-2. Lucknow the appellant had sufficient documents to prepare the required details is erroneous and not based on facts.*
- 2.1 *Because the finding of the learned 1st appellate authority that the appellant was well within his right to obtain the copies of the impounded material and the DCIT, Range-2 Lucknow could not have denied is erroneous and not based on facts.*
- 2.2 *Because the learned 1st appellate authority erred in ignoring the fact that to prepare the required details from other sources like vouchers and FOR day books is very time consuming and requires considerable manpower and in any case the learned 1st appellate authority did not allow adequate opportunity to do the needful in this matter.*
3. *Because the order of the learned Addl. CIT (TDS) has been passed without making available the requisite information / documents to the assessee in-spite of several requests and hence the principles of natural justice have not been followed. The order is therefore vitiated and is liable to be set-aside.*
4. *Because the learned 1st appellate authority erred in upholding the interest calculated by the assessing officer on FDRs at Rs.3,95,80,517/- without confronting the basis or documents on the basis of which this amount has been calculated and hence the order is bad in law.*
5. *Because the learned 1st appellate authority has erred in assuming that the entire interest of Rs.3,95,80,517/- has been paid to non members and was liable for TDS.*
6. *Because the learned 1st appellate authority has erred in assuming the entire interest payment to each FD holder is above Rs.10,000/- and is liable for TDS.*

Without prejudice to the above,

7. *Because the learned Addl. Commissioner of Income Tax-(TDS), Lucknow erred in facts and in law in passing the order dated 24-03-2015 u/s 201 & 201(1A) of the Income Tax Act, 1961.*

8. *Because the learned Addl. Commissioner of Income tax, (TDS), Lucknow hereinafter referred as assessing officer had no warrant to determine a liability of Rs.75,83,402/- by passing an order u/s 201 and 201(1A) of the Income tax Act, 1961.*
9. *Because in any case it was beyond the jurisdiction of the learned Assessing Officer to pass order u/s 201 and 201(1A) of the I. T. Act.*
10. *Because the order appealed against is contrary to facts, law and principles of natural justice."*

I.T.A. No.215/Lkw/2017

- "1.1 *Because the learned 1st appellate authority erred in up-holding the order of A.O. u/s 201 & 201(1A) of the IT Act, 1961.*
- 1.2 *Because the finding of the learned 1st appellate authority that in the absence of FOR day book which were impounded and were in the custody of DCIT, Range-2. Lucknow the appellant had sufficient documents to prepare the required details is erroneous and not based on facts.*
- 2.1 *Because the finding of the learned 1st appellate authority that the appellant was well within his rights to obtain the copies of the impounded material and the DCIT, Range-2 Lucknow could not have denied is erroneous and not based on facts.*
- 2.2 *Because the learned 1st appellate authority erred in ignoring the fact that to prepare the required details from other sources like vouchers and FOR day books is very time consuming and requires considerable manpower and in any case the learned 1st appellate authority did not allow adequate opportunity to do the needful in this matter.*
3. *Because the order of the learned Addl. CIT (TDS) has been passed without making available the requisite information / documents to the assessee in-spite of several requests and hence the principles of natural justice have not been followed. The order is therefore vitiated and is liable to be set-aside.*
4. *Because the learned 1st appellate authority erred in upholding the interest calculated by the assessing officer on FDRs at Rs. 2,93,10,5337- without confronting the basis or documents on the basis of which this amount has been calculated and hence the order is bad in law.*

5. *Because the learned 1st appellate authority has erred in assuming that the entire interest of Rs.2,93,10,533/- has been paid to non members and was liable for TDS.*
6. *Because the learned 1st appellate authority has erred in assuming the entire interest payment to each FD holder is above Rs.10,000/- and is liable for TDS.*

Without prejudice to the above,

7. *Because the learned Addl. Commissioner of Income Tax-(TDS),Lucknow erred in facts and in law in passing the order dated 19-03-2015 u/s 201 & 201(1 A) of the Income Tax Act, 1961.*
8. *Because the learned Addl. Commissioner of Income tax, (TDS), Lucknow hereinafter referred as assessing officer had no warrant to determine a liability of Rs.55,43,544/- by passing an order u/s 201 and 201(1 A) of the Income tax Act, 1961.*
9. *Because in any case it was beyond the jurisdiction of the learned Assessing Officer to pass order u/s 201 and 201(1A) of the I. T. Act.*
10. *Because the order appealed against is contrary to facts, law and principles of natural justice."*

I.T.A. No.123/Lkw/2016

- "1.1 *Because the learned 1st appellate authority erred in holding that adequate opportunity was given by the assessing officer to the appellant for passing the order u/s 143(3) of the IT Act, 1961.*
- 1.2 *Because the learned assessing officer ought to have held that the assessing officer did not allow adequate opportunity to the assessee before passing the order dated 19-03-2014 under section 143(3).*
- 2.1 *Because the learned 1st appellate authority ought not to have disallowed Rs.96,65,803/- in respect of interest payments on FDRs.*
- 2.2 *Because the learned 1st appellate authority erred in stating that the relevant documents in respect of interest on FDRs were not provided by the assessee whereas the 1st appellate authority ignored the fact that these documents were impounded and were in the possession of Income Tax Department.*

- 2.3 *Because the learned 1st appellate authority erred in ignoring the fact that TDS was deducted on the interest and paid to the credit of central government when the interest was paid to the members.*
- 2.4 *Because the learned 1st appellate authority erred in ignoring the fact that the list of interest prepared by AO of Rs.96,65,803/- was not confronted to the assessee before passing the order u/s 143(3) of the Income Tax Act, 1961.*
- 2.5 *Because the learned 1st appellate authority erred in holding that assessing officer was justified in making the addition of Rs.96,65,803/- whereas the correct amount of interest relevant to A.Y. 2011-12 is Rs.14,33,374/- details of which were submitted to the 1st appellate authority.*
- 2.6 *Because the learned 1st appellate authority erred in stating that reasonable opportunity was provided to the assessee by AO ignoring the fact that no such opportunity was provided besides the books of accounts and other records relating to the FDRs and their interest were impounded and are in the possession of the Income Tax Department.*
- 3.1 *Because the learned 1st appellate authority erred in ignoring the fact that the assessee was not a co-operative bank for part of the previous year relevant to AY 2011-12 as it was granted banking licence by RBI w.e.f. 12-05-2010 and till that time it was a credit cooperative society engaged in providing loans to its members only.*
- 3.2 *Because the learned CIT (Appeals) having allowed the claim of the assessee u/s 80P in the assessing year, i.e., AY 2008-09, it was all the more reason for the learned 1st appellate authority to have considered the claim of the assessee for deduction u/s 80P.*
4. *Because the learned 1st appellate authority ought to have allowed set off of carry forward of losses claimed by the assessee.*
- 5.1 *Because the learned 1st appellate authority ought not to have disallowed Rs.7,47,412/- in respect of Bank contribution on PF contribution.*
- 5.2 *Because the learned 1st appellate authority erred in ignoring the fact that no query was raised during the assessment proceeding by A.O. and also the issue was not confronted to the assessee.*
- 6.1 *Because the learned 1st appellate authority erred in confirming the disallowances made by AO in respect of provision for computerization expense of Rs.9,00,000/-, staff welfare of Rs.1,50,000/- and income tax of Rs.5,00,000/-.*

- 6.2 *Because the learned 1st appellate authority erred in ignoring the fact that no query was made and the issue was not confronted to the assessee.*
7. *Because the order appealed against is contrary to facts, law and principles of natural justice."*

(B) The facts of the case, in brief, are that the assessee is a cooperative society engaged in the business of banking and providing banking services to its members only and registered under the U.P. Co-operative Societies Act, 1912 and has been granted license by the Reserve Bank of India to carry on banking business. A survey action u/s 133A of the I. T. Act was conducted in the assessee's case and certain books of account and documents were impounded. The assessee was treated as an assessee in default for non-deduction of TDS and was directed to pay the total amount of TDS and interest. The assessee filed appeals in the office of learned CIT(A). The appeals filed by the assessee were dismissed by the learned CIT(A). Now the assessee is in appeal before the Income Tax Appellate Tribunal.

(C) At the time of hearing, learned Counsel for the assessee submitted that the Assessing Officer passed the assessment order without providing reasonable opportunity and also without making available the requisite information and documents that were impounded by the Assessing Officer and kept in his own possession. It was submitted that the assessment order was in clear violation of provisions of natural justice. The learned Counsel for the assessee further submitted that the learned CIT(A) also passed order without providing reasonable opportunity to the assessee ignoring the fact that the preparation of required details from sources other than the materials impounded by the Assessing Officer and kept in the possession of the Assessing Officer (from other sources like vouchers, FDR and day books) was a very time consuming exercise, which required considerable man power. The learned Counsel for the assessee referred to the paper books containing the

following particulars; but submitted that the issues in dispute should be restored back to the file of the Assessing Officer with the direction to pass de novo orders in accordance with law, only adhering to principles of natural justice.

Appeal no. ITANo.123/LKW/2016

A.Y. 2011-12

Paper-Book Index



S.No.	Description of documents
1.	Copy of ledger U P Civil Secretariat Primary Cooperative Bank showing details of FDR's
2.	Party wise details of FDR's and interest paid on maturity.
3.	Copy of letter issued by joint registrar of Sahkari Samitia Lucknow regarding Provision for expenses for computerization.
4.	Details of payment of P F to Employee.
5.	Details of payment of Bonus to Employee and General Ledger Copy.

ITA No.123/LKW/2016- A.Y. 211-12

U. P. Civil Secretariat Primary
Cooperative Bank Limited

vs.

ITO-2(3), Luck

Date of hearing: 11-04-2016

PAPER BOOK

Ground no.		Description of documents
1	i	Copy of notice dated 29-08-2013 issued u/s 142(1) of the I.T. Act, 1961 alongwith questionnre
	ii	Copy of written submissions dated 29-07-2015 filed before CIT(A)-1, Lucknow alongwith its annexures
2	i	Copy of financial statements for FY 2010-11
	ii	Copy of tax audit report dated 28-09-2011 u/s 44AB of the Income tax Act, 1961
	iii	Copy of written submissions dated 29-07-2015 filed before CIT(A)-1, Lucknow alongwith its annexures showing working of Interest to Non-Members
	iv	Copy of written submissions dated 04-03-2014 filed before the Assessing Officer
	v	Copy of assessment order dated 18-03-2013 for A.Y. 2010-11
	vi	Copy of order dated 28-06-2013 of DCIT, Range-2, Lucknow issued u/s 133A(3)(ia) of the I T Act, 1961
	vii	Copy of notice dated 29-08-2013 issued u/s 142(1) of I. T. Act, 1961.
3	i	Copy of written submissions dated 29-07-2015 filed before CIT(A)-1, Lucknow alongwith its annexures
	ii	Copy of letter dated 12-05-2010 of Reserve Bank of India alongwith banking licence certificate no. UBD/UP-0019P dated 12-05-2010
	iii	Copy of appellate order dated 18-03-2015 for A.Y. 2008-09
4	i	Copy of written submissions dated 29-07-2015 filed before CIT(A)-1, Lucknow alongwith its annexures
	ii	Copy of written submissions dated 04-03-2014 filed before the Assessing Officer
	iii	Copy of assessment order dated 18-03-2013 for A.Y. 2010-11

5	i	Copy of notice dated 29-08-2013 issued u/s 142(1) of I T Act, 1961 along with questionnaire
6	i	Copy of written submissions dated 29-07-2015 filed before CIT(A)-1, Lucknow along with its annexures
	ii	Copy of letter dated 12-04-2010 of Joint Registrar, Cooperative Societies, U.P., Lucknow.
	iii	Copy of letter dated 14-03-2011 of Joint Registrar, Cooperative Societies, U.P., Lucknow.
	iv	Copy of notice dated 29-08-2013 issued u/s 142(1) of I T Act, 1961 along with questionnaire.

Appeal no. ITA No. 214/LKW/2016

A.Y. 2008-09

Paper-Book Index

S. No.	Description of documents
1	Sample copy of FDR's day book (Already impounded with A.O.) Along with copy of general ledger of interest payable on FDR'S.

**ITA NO. 214/Lkw./2017
215/Lkw./2017
A.Y. 2008-09 and 2009-10**

PAPER BOOK

IN

U.P. Civil Secretariat Primary Co-Operative Bank

INDEX

S.L. No.	PARTICULARS
1.	Copy of Bye Laws
2.	Copy of Panchanama/Seized Memo
3.	Copy of Notices Dt. 02.03.2015 and 18.03.2015
4.	Copy of reply to letter Dt. 12.06.2014
5.	Copy of order passed by Ld. Commissioner of Income Tax (Appeals)-4, Lucknow, Dt. 20.02.2018
6.	Copy of letter Dt. 22.07.2014

Appeal no. ITANo.215/LKW/2017

A.Y. 2009-10

Paper-Book Index

S. No.	Description of documents
1	Sample copy of FDR's day book (Already impounded with A.O.) Along with copy of general ledger of interest payable on FDR'S.

The learned Departmental Representative expressed no objection to this and left the matter to the discretion of the Bench.

(D) We have heard both sides. We have perused the materials on records. We are of the view that Revenue put onerous responsibility on the assessee by requiring the assessee to furnish information and details without providing/making available copies of impounded documents and records. We are also of the view that the learned CIT(A) and the Assessing Officer have passed orders without providing reasonable opportunity to the assessee, in the facts and circumstances of the present case. In view of the foregoing, we restored all the issues in dispute in these appeals before us, to the file of the Assessing Officer with the direction to make available copies of all materials impounded and kept in the possession of the Assessing Officer and to pass de novo orders in accordance with law after providing reasonable opportunity to the assessee; and ensuring due adherence to principles of natural justice.

(E) In the result, all the appeals are partly allowed for statistical purposes.

(Order pronounced in the open court on 13/01/2026)

Sd/.
(KUL BHARAT)
Vice President

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:13/01/2026

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. D.R. ITAT