

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 138/Agr/2014
Assessment Year: 2008-09**

The Farrukhabad District Co-operative Bank Ltd., Fatehgarh, Distt. Farrukhabad (UP).	Vs.	DCIT, Circle 2(1) Farrukhabad.
PAN : AACCT1561A		
(Appellant)		(Respondent)

**And
ITA No. 75/Agr/2016
Assessment year : 2012-13**

The Farrukhabad District Co-operative Bank Ltd., Fatehgarh, Distt. Farrukhabad (UP).	Vs.	DCIT, Circle 2(1) Farrukhabad.
PAN : AABAT6602M		
(Appellant)		(Respondent)

Assessee by	Sh. Rajesh Malhotra, CA
Department by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	18.12.2025
Date of pronouncement	15.01.2026

ORDER

PER : S. RIFAUH RAHMAN, ACCOUNTANT MEMBER:

ITA No. 138/Agr/2014 has been preferred by assessee against the order of learned CIT(Appeals), Muzaffarnagar dated 20.01.2014 u/s. 250 of the Income-tax Act, 1961 ("the Act" for short) for the assessment year 2008-09, whereas assessee has preferred ITA No. 75/Agr/2016 against

the order of learned CIT(Appeals), Aligarh dated 08.02.2016 for the assessment year 2012-13. For the sake of convenience, we first take up the appeal for the assessment year 2008-09.

ITA No. 138/Agr/2014 (A.Y. 2008-09):

2. Brief facts of the case are, the assessee filed its return of income declaring nil income on 30.09.2009. The return was processed u/s. 143(1) of the Act. Subsequently, case was selected for scrutiny. Accordingly, notices u/s. 143(2) and 142(1) were issued and served on the assessee. In response, AR of the assessee submitted relevant information as called for. Since, the assessee was taking several adjournments and did not furnish further information in response to various notices issued to the assessee, the Assessing Officer proceeded to disallow the expenditure to the extent of Rs.1,91,56,179/-, i.e., 20% of expenditure of Rs.9,57,80,898/- claimed by the assessee. Since, the assessee has claimed loss of Rs.1,96,37,752/-, he determined the net loss of Rs.4,81,572/-.

3. Aggrieved with the above order, the assessee preferred an appeal before learned CIT(A), Muzaffarnagar. After considering detailed submissions of the assessee and also additional evidences filed by assessee, a remand report was called from the Assessing Officer and after considering the remand report, learned CIT(A) dismissed the

grounds raised by the assessee with the observation that the assessee produced books of account during remand proceedings, but it could not justify non-production of the same during the assessment proceedings. Thus, the Assessing Officer was fully justified in making the aforesaid disallowance. Learned CIT(A) justified the findings of the Assessing Officer for the reason that the assessment proceedings were due for more than 16 months and 15 hearings were given. The assessee was given sufficient opportunity. In absence of books of account, the Assessing Officer was justified in making aforesaid disallowance in an ex parte order.

4. Further while examining the books of account during the remand proceedings, it was noticed that the assessee has debited profit and loss account towards provision for overdue interest by an amount of Rs.1,93,94,000/-. It was claimed that this interest is included in the interest income on the credit side to the extent the interest income is not actually received. It was claimed as deduction by way of this provision for overdue interest. Learned CIT(A) observed that income has accrued, hence to be taxed. It is not a bad debt, hence, a provision for bad debt allowable to the banking company is not applicable for this amount, as it is not part of the principal loan given but a part of interest income on the same. Since the assessee did not produce books of account along with

supporting bills/vouchers before the Assessing Officer in the assessment proceedings and also during the appellate proceedings, the onus was squarely on the assessee to produce such documents. Accordingly, he proceeded to make the addition of Rs.1,93,94,000/- claimed at expenditure side under the head provision for overdue interest. Since the interest is included in the interest income on the credit side but to the extent the interest income is not actually received, it is claimed as deduction by way of this provision for overdue interest. Accordingly, he enhanced the income of the assessee.

5. Aggrieved, the assessee is in appeal before us, raising the following grounds of appeal:

“1. That in absence of an order u/s 120(4)(b) of the Income Tax Act, 1961, the Addl. CIT, Range-1, Aligarh cannot act as an "Assessing Officer as defined u/s 2(7A) of the Income Tax Act, 1961, hence the impugned assessment order is void-ab-initio and liable to be quashed

2. That the learned CIT Appeal Muzaffarnagar has erred in law and on facts in upholding the addition vide order dt. 23/12/2010 passed by the A.O. u/s 144 of the Income Tax Act, 1961 which is all arbitrary and bad in law.

3. That the learned CIT Appeal Muzaffarnagar has erred in law and on facts in sustaining the disallowance of expenditure amounting to Rs. 1,91,56,179/- made by A. O. which is all arbitrary and based on presumptions thus legally not maintainable.

4. That the learned CIT Appeal Muzaffarnagar has erred in law and on facts in sustaining the disallowance made by A.O. on an arbitrary manner, at 20% of total expenditure of Rs. 9,57,80,898/- (as claimed), without any basis and based on

presumption thus, the disallowance is legally not sustainable in law.

5. That the learned CIT Appeal Muzaffarnagar has erred in law and on facts in upholding the fact that books of accounts are not maintained and thereby upholding the rejection of books of accounts u/s 145(3) of the Income Tax Act, 1961, without appreciating the fact that the appellant is a cooperative bank and maintains regular books of accounts in the course of business at all the branches and accounts are dully audited and the audit report was duly submitted along with the copy of ITR before the A.O.

6. That the learned CIT Appeal Muzaffarnagar has erred in law and on facts in enhancing the income of the appellant by Rs. 1,93,94,000/-, being expenditure claimed under the head "Provision for overdue interest" without issuing mandatory notice u/s 251(2) of the Income Tax Act, 1961

7. That the order of the learned CIT Appeal Muzaffarnagar dated 20.01.2014 is bad in law and against the principles of natural justice and equity.

8. The Assessment is without jurisdiction.

9. That any other relief as may be deemed fit in the case & Circumstances of the case be granted. Your humble appellant craves leave to add or amend any ground(s) on or before the date of hearing."

6. At the time of hearing, learned AR of the assessee brought to our notice page 4 of the first appellate order and submitted that learned CIT(A) has called for remand report and the report was submitted by the Assessing Officer. However, no remand report was shared with the assessee and the learned CIT(A) has sustained the additions made by the Assessing Officer with the observations that the books of account

were not submitted by the assessee during the original assessment proceedings. He objected to the above observations.

7. With regard to the enhancement made by learned CIT(A), he submitted that the provision created by the assessee is not towards non-collection of interest, rather, it is a provision created against advances. Therefore, he prayed that the enhancement made by the learned CIT(A) is not justified. Further, he submitted that none of the remand report collected from the Assessing Officer was shared with the assessee and prayed that the enhancement made by the learned CIT(A) be deleted.

8. On the other hand, learned DR brought to our notice page 6 of the appellate order and submitted that the assessee has not produced the books of accounts before the Assessing Officer and even during the appellate proceedings along with supporting bills/vouchers. Therefore, he supported the findings of the lower authorities.

9. With regard to the enhancement, he submitted that the assessee is following mercantile system and the interest due has to be declared as income of the assessee. Same cannot be claimed as deduction for the reason that it is not actually collected. Accordingly, he relied on the findings of the lower authorities.

10. Considered the rival submissions and the material placed on record.

11. We observe that the Assessing Officer has disallowed 20% of the total expenditure claimed by the assessee for the reason that the assessee has not responded nor represented the case before him. It has also not produced any books of account, bills and vouchers. In appeal before learned CIT(A), the assessee filed additional evidences and based on the same, a remand report was called from the Assessing Officer. It is submitted before us that the relevant remand report was never shared with the assessee. Further, we observe that the learned CIT(A) has dismissed the grounds raised by the assessee by observing that the assessee has not submitted the books of account during the original assessment proceedings. He equally overlooked the fact that during the remand proceedings, assessee has filed relevant books of account and additional evidences. It is not clear what was the finding in the remand report, which was never shared with the assessee. Considering the peculiar nature of facts available on record, in our considered view, in order to punish the assessee for non-compliance, the Assessing Officer cannot proceed to make adhoc disallowance. It is a fact on record that the assessee is a District Cooperative Bank. It has to follow the banking regulations and these are duly audited. Therefore, in absence of findings in the remand report, the natural justice requires that the same has to be shared with the other party. Since the revenue

authorities proceeded to make adhoc disallowances, in our considered view, the same is not justified. Accordingly, we are inclined to delete the same and allow the grounds raised by the assessee.

12. With regard to the enhancement towards provision for overdue interest, we observe that the learned CIT(A) has enhanced the addition with the finding that the relevant interest is due and receivable. The same cannot be claimed as provision for non-receipt of the relevant interest. On the other hand, we observe that learned AR submitted that it is the provision created for the principal as per Banking Regulation Act, 1949, not towards overdue interest. Since the above fact was not clearly understood by the tax authorities as well as the same was not verified by the tax authorities, this being the regular provision created by the cooperative banks based on the Banking Regulation Act, we are inclined to remit this issue back to the Assessing Officer to verify the relevant provision and allow the same as per law. At the same time, we direct the assessee to file relevant information and the relevant provision as per banking law with supporting calculations to claim the same before the Assessing Officer. It is needless to say that the Assessing Officer should extend the benefit of being heard to the assessee during the proceedings. In the result, ground No. 6 raised by the assessee is

allowed for statistical purposes. Accordingly, appeal of the assessee is partly allowed as per above directions.

ITA No. 75/Agr/2016 (A.Y. 2012-13):

13. At the time of hearing in this case, it is brought to our notice that the Assessing Officer has disallowed certain claim made by the assessee u/s. 36(1)(viii) of the Act, overlooking the fact that the assessee is allowed to claim 10% of average balances of loans and advances. In this regard, it is prayed that the issue may be remitted back to the Assessing Officer to verify the above mistake apparent on record. Since the issue involved is regarding determination and calculation at the end of Assessing Officer, we are inclined to remit this issue back to the Assessing officer for the limited purpose to verify the calculations submitted by the assessee in this regard. The assessee has submitted the relevant details as under :

**The Farrukhabad District Cooperative Bank Ltd., Fatehgarh
Rural Branches 2011-12**

Distt	Branch	Average Balance Loan and Advance	10% of Column 3
1	2	3	4
Farrukhabad	Rajepur	64232831.62	6423283.16
	Jahanganj	25123681.99	2512368.20
Kannauj	Jalalabad	69544078.69	6954407.85
	Indergarh	31279894.42	3127989.44
	Thathia	41095555.72	4109555.57
	Manimau	33337001.03	3333700.10
Total		264613043.46	26461304.35

14. Accordingly, we are inclined to remit this matter back to the file of Assessing Officer with the limited purpose of above calculation and allow the deduction as per law. In the result, appeal is allowed for statistical purposes.

15. In the result, assessee's appeal for A.Y. 2008-09 is partly allowed for statistical purposes and the appeal for A.Y. 2012-13 is allowed for statistical purposes.

Order pronounced in the open court on 15.01.2026.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER**

Dated: 15.01.2026

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra