

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No.4648/Mum/2016
(Assessment Year 2012-13)

The ITO, Ward 19(2),
Room No.217, Matru Mandir,
Mumbai 400 007.

..... Appellant

Vs.

New Seagull Co-op Hsg.Society Ltd.,
Sea Gull Building, 13, M.L.Dahanukar
Marg, Mumbai 400 026
PAN: AAAN 1542P

.... Respondent

Appellant by : Ms. Beena Santosh
Respondent by : Shri Bhupendra G. Fafadia
Date of hearing : 29/12/2016
Date of pronouncement : 29/12/2016

ORDER

The captioned appeal filed by the Revenue pertaining to assessment year 2012-13 is directed against an order passed by CIT(A)-30, Mumbai dated 07/04/2016, which in turn, arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 03/03/2015.

2. In this appeal, the only issue is as to whether the transfer fee collected under the name 'building betterment fund' amounting to Rs.39.00 lacs is entitled for exemption under the principle of mutuality. The respondent is a co-operative housing society and it was noticed that during the year under

consideration it had collected transfer fee from incoming and outgoing members of Rs.39.00 lacs. On being show-caused, the assessee claimed before the Assessing Officer that the said amount was exempt in terms of the principles of mutuality following the judgment of the Hon'ble Bombay High Court in the case of Mittal Court Premises Co-op.Society Ltd. vs. ITO, (2009) 184Taxaman 292 (Bom). The decision of the Hon'ble Bombay High Court in the case of CIT vs. Darbhanga Mansions CHS Ltd. in ITA No.1474 of 2012 dated 1/12/2014 was also cited by the assessee. The Assessing Officer did not accept the plea of the assessee only on the ground that the decision of Hon'ble Bombay High Court in the case of Mittal Court Premises Co-op. Society Ltd. (supra) has not been accepted by the Department and the matter is sub-judice before the Hon'ble Supreme Court. As a consequence, the sum of Rs.39.00 lacs was sought to be taxed.

3. The CIT(A) has since set-aside the stand of the Assessing Officer following the judgment of the Hon'ble Bombay High Court in the case of Mittal Court Premises Co-op.Society Ltd. (supra) as well as the judgment of Hon'ble Bombay High Court in the case of Darbhanga Mansions CHS Ltd (supra). Against such a decision of the CIT(A), Revenue is in appeal before me.

4. It was common point between the parties that the judgment of the Hon'ble Bombay High Court relied upon by the CIT(A) continues to hold the field and the same has not been altered by Hon'ble Supreme Court. In this view of the matter, I find no error on the part of the CIT(A) in holding that the amount received from members as transfer fee under the head 'building

betterment fund' is exempt on the principles of mutuality. As a consequence, appeal of the Revenue is dismissed.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 29/12/2016

Sd/-
(G.S.PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 29/12/2016

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai