

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC-I : NEW DELHI
BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER

ITA No.2328/Del/2016
Assessment Year : 2012-13

ITO,
Ward 2(1),
Gurgaon.

Vs. HEWO Apartment Owners
Welfare Association,
GH 41, Sector 56,
Gurgaon.

PAN: AAAAH8013K

(Appellant)

(Respondent)

Assessee By : Shri Kapil Goel, Advocate
Department By : Shri Rajesh Kumar, Sr. DR

Date of Hearing : 28.09.2016
Date of Pronouncement : 29.09.2016

ORDER

This appeal filed by the Revenue is directed against the order passed by the CIT(A) on 16.2.2016 in relation to the assessment year 2012-13.

2. The first ground is against the deletion of addition of Rs.1,48,600/- made by the AO by treating the 'Receipt from booking of community centre' as taxable income. The AO observed that this amount was shown

to have been received from non-members. The assessee was called upon to explain as to why the principle of mutuality be not ignored because this amount was received from non-members. The assessee contended that no amount was received from non-members and the entire receipt was only from its members. Not convinced, the AO made addition for this sum. The Id. CIT(A) deleted this addition by observing that this amount was received only from members and not from non-members.

3. I have heard the rival submissions and perused the relevant material on record. The whole case of the AO is that since the amount was received from non-members, hence the mutuality lacked and the amount became chargeable to tax. It is seen that the assessee categorically stated before the AO that community centre was available for use only to the members and not to the non-members. This was reiterated before the Id. CIT(A) and a copy of resolution was appended as per which the community centre services were available only to the society residents since inception. The AO took the amount as having been received from non-members on the basis of depiction in the Income and Expenditure account of the assessee, which is as under : -

`Other income Members & Non-members

Booking of Community Centre	1,48,600	
Transfer from Chandigarh	40,00,000	
Bank Interest	35,588	
FDR's Interest Accrued but not due	<u>19,232</u>	42,03,420'

4. It is obvious from the above that there is a common heading of Income from Members and non-members. Then there are transactions both with the members and non-members. From a total mix of income from both the streams, receipt of bank interest and FDR interest are from transactions with non-members and the receipt from booking of community centre is from Members, as was forcefully contended by the assessee before the AO. Once it is shown that the community centre was available only to the members, there can be no reason for treating its use as for non-members and consequently making the addition. I, therefore, uphold the impugned order on this score.

5. The only other ground is against the deletion of disallowance of Rs.40 lac made by the AO. The facts of this ground are that the assessee showed a receipt of Rs.40 lac under the head 'Transfer from Chandigarh.' On being called upon to explain the nature of this receipt, the assessee submitted that it was received from HEWO, Panchkula for maintenance work. Not satisfied, the AO made disallowance. The Id. CIT(A), relying on an order dated 13.11.2009 passed by the Delhi Bench of the Tribunal under similar circumstances in *HEWO Apartment Association, Flat No. 98, HEWO Apartments, Sector 15, Part II, Gurgaon, Haryana vs. ITO, in ITA No.2952/Del/2009*, deleted the disallowance. The Revenue is aggrieved against such deletion.

6. I have heard the rival submissions and perused the relevant material on record. A copy of the Tribunal order relied on by the Id. CIT(A) is available on record. Para 9 of this order discusses the nature of amount as transfer fees received by that assessee from HEWO, Panchkula. The Tribunal observed that the amount of transfer fee received by that assessee could not be treated as an income. No difference in the nature of receipt by that assessee and the instant assessee has been pointed out by the Id.

DR. Respectfully following the precedent, I uphold the view taken by the
ld. CIT(A). This ground fails.

7. In the result, the appeal is dismissed.

The order pronounced in the open court on 29.09.2016.

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 29th September, 2016.

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.