

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI C.N. PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.7051/M/2014 (AY: 2009-2010)

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| ITO-5(1)(4), Aayakar Bhavan, R.No.569, 5 th Floor, M.K. Road, Mumbai – 400 020. | बनाम/ Vs. | M/s. Hill Properties Ltd., Hill Park Estate, A.G. Bell Road, Malbar Hill, Mumbai – 400 006. |
| स्थायी लेखा सं./PAN : AABCH 7578 L | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी की ओर से / Assessee by : | Shri S.K. Misra, DR |
| प्रत्यर्थी की ओर से/ Revenue by : | Shri Farukh Irani, AR |

सुनवाई की तारीख / Date of Hearing : 16.06.2016

घोषणा की तारीख /Date of Pronouncement : 12.08.2016

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 20.11.2014 is against the order of the CIT (A)-9, Mumbai dated 13.12.2013 for the assessment year 2011-2012. In this appeal, assessee raised two grounds and they read as under:-

"1. Whether on the facts and in the circumstances of the case and in law, the share transfer fees of Rs. 20 lakhs nominee company charges of Rs. 29 lakhs and non-refundable security deposit of Rs. 70,000/- received by the assessee company are exempt from income tax on principle of mutuality.

2. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in not adjudicating the addition made on alternate ground that even if it is assumed that the principle of mutuality applies to the assessee, the share transfer fees and nominee occupancy charges are taxable in the hands of the assessee as it has been collected in excess against the directive of Govt. of Maharashtra which shows that the impugned income is tainted by commerciality."

2. Briefly stated relevant facts of the case are that the assessee is an unlisted public company, owning premises on which five residential buildings are constructed. Assessee filed the return of income declaring the total income of Rs. 19,45,784/-. Assessment was completed u/s 143(3) of the Act and the assessed income was determined at Rs. 90,75,480/-. During the assessment, AO noticed that assessee

collected (i) share trans fees of Rs. 20 lakhs; (ii) nominee occupancy charges of Rs. 29.75 lakhs; (iii) non-refundable security deposit of Rs. 70,000/- and (iv) tennis court fees of Rs. 1,32,500/- and the same were claimed as exempt on the ground of "principle of mutuality". AO denied the said claimed by holding that the 'principle of mutuality' applies to the cooperative bodies only. Assessee, being a company, is not entitled to claim the benefit of exemption on this ground. Accordingly, AO made the additions on accounts of share transfer fees of Rs. 20 lakhs; nominee occupancy charges of 29.75 lakhs; security deposit for repair of Rs. 70,000/- and tennis court fees of Rs. 1,32,500/-. Aggrieved, assessee carried the matter in appeal before the first appellate authority.

3. During the proceedings before the first appellate authority, after considering the submissions of the assessee, CIT (A) partly allowed the appeal and granted relief to the assessee on accounts of the share transfer fees of Rs. 20 lakhs nominee company charges of Rs. 29.75 lakhs and non-refundable security deposit of Rs. 70,000/- received by the assessee. Aggrieved with the said decision of the CIT (A), Revenue is in appeal before the first appellate authority.

4. During the proceedings before the Tribunal, Ld DR for the Revenue relied on the order of the AO.

5. On the other hand, Ld Counsel for the assessee heavily relied on the order of the CIT (A) and reiterated the submissions made before the lower authorities. He further mentioned that the grounds raised by the Revenue are identical to that of the ones adjudicated by the ITAT, Mumbai in the assessee's own case vide ITA No.2999/M/2012 (2009-2010), dated 20.12.2013. A copy of the said decision of the Tribunal is placed before us. Further, assessee also filed various decision of the Tribunal in its support. It is the prayer of the Ld Counsel that considering the covered nature of the issues, the grounds raised by the Revenue are required to be decided in the same lines as adjudicated by the Tribunal in the above cited assessee's own case.

6. We have heard both the parties and perused the orders of the Revenue Authorities as well as the cited decision of the Tribunal in assessee's own case

(supra), wherein one us (AM) is a party to the said order, and also the relevant material placed before us. On perusal of the said decision of the Tribunal (supra), dated 20.12.2013, we find, para 5 of the said Tribunal's order is relevant in this regard. For the sake of completeness of this order, the same is extracted as under:-

5. *We have heard both the parties and perused the orders of the Revenue Authorities as well as the cited order of the Tribunal in assessee's own case (supra) dated 3.4.2013. On perusal of the said Tribunal's order, we find that para 4 is relevant in this regard and the same reads as under:*

*"4. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that all the three issues raised in this appeal of the Revenue are squarely covered in favour of the assessee by the orders of the Tribunal for the earlier years, wherein **similar issues have been consistently decided by the Tribunal in favour of the assessee.** In one of such orders passed for the immediately preceding AY i.e., 2007-2008, the coordinate Bench of this Tribunal vide its order dated 21.10.2011 passed in **ITA No. 6381/M/2010** has held that transfer fees received by the company being a mutual concern, whether from out coming or **incoming members is not liable to tax because of principle of mutuality.** The Tribunal also held that the **refundable SD having been collected by the assessee company from its members are also exempt from tax as the principles of mutuality are clearly applicable to the said charges.** As regard the nominee occupancy charges, the Tribunal relied on the decision of the **Hon'ble Bombay High Court in the case of Mittal Court Premises Cooperative Society Ltd. vs. ITO [2009] 184 Taxman 292 (Bom.)** to hold that **principles of mutuality are applicable even to the nominee occupancy charges although the same were received from the tenants who are not the members of the assessee company.** As the issues involved in the year under consideration as raised in the present appeal filed by the Revenue as well as all the material facts relevant thereto are similar to that of AY 2007-2008, we respectfully allow the order of the coordinate Bench of this Tribunal passed in assessee's own case for the AY 2007-2008 and uphold the impugned order of the Ld CIT (A) giving relief to the assessee on these issues. The appeal filed by the Revenue is accordingly dismissed."*

7. Considering the above, we are of the opinion that all the three issues raised by Revenue i.e., (i) **share transfer fees** received by the assessee company, on transfer of flats; (ii) **nominee occupancy charges** and (iii) **non-refundability of security deposits** are squarely covered, in favour of the assessee, by the said order of the Tribunal (supra) dated 20.12.2013. It is also evident that similar issues have been consistently decided by the Tribunal in favour of the assessee. Considering the settled nature of the issues involved in the grounds raised by Revenue, we are of the opinion that they should be decided in favour of the assessee. Accordingly, grounds raised by the Revenue are dismissed.

8. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 12th August, 2016.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 12.08.2016

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

व.नि.स./ OKK, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**