

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri B.R. Baskaran (AM)

I.T.A. No. 6899/Mum/2017 (Assessment Year 2010-11)

ITO-21(2)(5) Room No. 107 1 st Floor Piramal Chambers Parel Mumbai-400 012.	Vs.	M/s. Poonam Chambers 'B' Wing Commercial Premises Cooperative Society Limited Plot No. G, Shiv Sagar Estate, Dr. Annie Besant Road, Worli Mumbai-400 018. PAN : AAAAP1685M
(Appellant)		(Respondent)

Assessee by	Shri Rituraj Gurjar
Department by	Ms. Arju Goradia
Date of Hearing	22.2.2018
Date of Pronouncement	22.2.2018

ORDER

The revenue has filed this appeal challenging the order dated 08-09-2017 passed by Ld CIT(A)-33, Mumbai and it relates to the assessment year 2010-11. The revenue is aggrieved by the decision of Ld CIT(A) in holding that the contribution of Rs.47.25 lakhs given by a member to the new building fund and the non-occupancy charges of Rs.36,136/- collected from one of the members of the society is exempt under the principles of mutuality.

2. I heard the parties and perused the record. The assessee is a co-operative housing society deriving income from members and interest on deposits. During the year under consideration, the assessee received voluntary contribution of Rs.47.25 lakhs from one of the members towards new building fund. The assessee also received non-occupancy charges of Rs.36,136/- from another member. The assessee claimed both the receipts as exempt under the principles of mutuality. In this regard, the assessee placed reliance on the decision rendered by Hon'ble Bombay High Court in the case of Mittal Court

Premises Co-operative Society (2010)(320 ITR 414). The AO did not follow the decision of jurisdictional high court on the reasoning that the revenue has not accepted the said decision and filed SLP in Supreme Court. Accordingly he assessed both the amounts in the hands of the assessee. The Ld CIT(A), however, deleted both the additions by following the decision rendered by jurisdictional High Court in the case of Mittal Court Premises co-operative society (supra). The revenue is aggrieved by the said decision of Ld CIT(A).

3. There should not be any dispute that the decision rendered by the High Court is binding on all the authorities falling within the jurisdiction of that High Court. Since the Ld CIT(A) has followed the decision rendered by jurisdictional High Court, I do not find any reason to interfere with the same. Accordingly I uphold the order passed by Ld CIT(A) on this issue.

4. In the result, the appeal filed by the revenue is dismissed.

Order has been pronounced in the Court on 22.2.2018.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 22/2/2018

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,

(Senior Private Secretary)
ITAT, Mumbai

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*M/s. Poonam Chambers 'B' Wing Commercial
Premises Cooperative Society Limited*