



IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI SANDEEP GOSAIN, JM
ITA No.5356/Mum/2017 & 5357/Mum/2017
(Assessment Year :2010-11 & 2011-12)

Jan Vikas Co-op Housing Society Sunder Lane, Off Marve Road, Orlem Valnai Village Malad West Mumbai – 400 064	Vs.	ITO – 24(2)(3) Mumbai
PAN/GIR No.AAAAJ7236N		
Appellant)	..	Respondent)

Assessee by	Shri Rupesh Barbhaya
Revenue by	Ms. N. Hemalatha
Date of Hearing	17/04/2018
Date of Pronouncement	20/04/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These are the appeals filed by assessee against the order of CIT(A)-41, Mumbai dated 01/02/2017 for A.Y.2010-11 and 2011-12 in the matter of order passed u/s.143(3) of the IT Act.

2. In both the years, assessee is aggrieved for taxing the transfer fees received from members and prospective members.
3. Facts in brief are that the assessee is association of persons incorporated by individuals to maintain the society premises in which the individuals are flat owners. The assessee is collecting contributions from individuals who are members and/ prospective members for maintenance

of the society and other expenses incurred for and V on behalf of members as individual and society as whole.

4. During the course of assessment, the Assessing Officer in his order have made an addition of Rs.2,99,997/- being the transfer fees received from members and prospective members which reads as below :

"On verification of the income as per income expenditure society received transfer fees of Rs.2,99,997/- & claimed various expenses as per Income and Expenditure and shown excess of Income on Expenditure of Rs.1,84,926/-. However the assessee should have offered Rs.2,99,997/- received as transfer fees for taxation. Accordingly, transfer fees of Rs.2,99,997/- received by the society is charged to tax."

5. The Assessing Officer has ignored the fact that the principle of mutuality implies that no one can make a profit out of itself.

6. Learned AR also placed on record the order of the Hon'ble Supreme Court in case of Venkatesh Premises Co-operative Society Ltd., Civil Appeal No.2706 of 2018 dated 12/03/2018, wherein Hon'ble Supreme Court held as under:-

"13. We have considered the submissions on behalf of the parties.

14. The doctrine of mutuality, based on common law principles, is premised on the theory that a person cannot make a profit from himself. An amount received from oneself, therefore, cannot be regarded as income and taxable. Section 2(24) of the Income Tax Act defines taxable income. The income of a co-operative society from business is taxable under Section 2(24)(vii) and will stand excluded from the principle of mutuality. The essence of the principle of mutuality lies in the commonality of the contributors and the participants who are also the beneficiaries. The contributors to the common fund must be entitled to participate in the surplus and the participators in the surplus are contributors to the common fund. The law envisages a complete identity between the contributors and the participants in this sense. The principle postulates that what is returned is contributed

by a member. Any surplus in the common fund shall therefore not constitute income but will only be an increase in the common fund meant to meet sudden eventualities. A common feature of mutual organizations in general can be stated to be that the participants usually do not have property rights to their share in the common fund, nor can they sell their share. Cessation from membership would result in the loss of right to participate without receiving a financial benefit from the cessation of the membership.”

7. We have gone through the orders of the authorities below and found that CIT(A) by passing *exparte* order dismissed the appeal of the assessee. We also observed that there is a delay in filing appeal. In the interest of substantial justice, we set aside the *exparte* order of CIT(A) and matter has restored the him for deciding afresh, keeping in view the decision of the Hon'ble Supreme Court as cited above.

8. In the result, both the appeals are allowed in part for statistical purposes.

Order pronounced in the open court on this 20/04/2018

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 20/04/2018

Karuna Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai