

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)

I.T.A. No. 3172/Mum/2015 (Assessment Year 2010-11)

M/s. Windsor Condominium Ground Floor, Windsor Bldg Off. CST Road, Vidyanagari Marg, Kalina, Santacruz(E) Mumbai-400 012. PAN : AAAAW2434K (Appellant)	Vs.	ITO 19(2)(2) Piramal Chambers Parel Mumbai-400 012. (Respondent)
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Assessee by	Shri Sunil K. Ramani & Shri Vinay Sinha
Department by	Shri V. Justin
Date of Hearing	14.06.2018
Date of Pronouncement	04.07.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 30-03-015 passed by Ld CIT(A)-34, Mumbai and it relates to the assessment year 2010-11. The assessee is aggrieved by the decision of Ld CIT(A) in rejecting the claim for refund of TDS amount of Rs.26.37 lakhs.

2. We heard the parties and perused the record. The assessee is an “association” formed on 31.08.2010 for maintenance of a housing complex named “Windsor” and “Windsor house” developed by M/s Windsor Realty P Ltd. It was earlier known as “Emgeen Windsor Condominium. Prior to its registration, this condominium was operating as an unregistered body. The unregistered body was managed by the builder M/s Windsor Realty P Ltd, i.e., all the receipts and expenditure were routed through the bank account of M/s Windsor Realty P Ltd and further TDS amounts were deducted in the name of M/s Windsor Realty P Ltd only. The work of the association was to collect contributions from its members towards maintenance charges, property tax etc and to incur various expenses to maintain the flats. The assessee claimed

exemption for the surplus amount under the principles of mutuality. The members have deducted tax at source when the payments were made by them as contributions. The amount of TDS so deducted for the financial year relevant to the AY 2010-11 worked out to Rs.26.37 lakhs. As stated earlier, the tax was deducted at source from the payment made to M/s Windsor Realty P Ltd on behalf of the unregistered association.

3. The assessee filed its return of income for AY 2010-11 claiming refund of Rs.26.37 lakhs. Since the assessee was registered only on 31.08.2010, i.e., after the end of the financial year, the AO held that assessee did not exist during the year relevant to AY 2010-11 and hence the income and expenditure shown by the assessee should belong to M/s Windsor Realty P Ltd only. Accordingly he determined the total income in the hands of the assessee at NIL and accordingly rejected the TDS claim of Rs.26,37,671/-. The Ld CIT(A) also confirmed the order passed by Ld CIT(A).

4. At this stage, the bench asked Ld A.R as to whether the income and expenditure were assessed in the hands of m/s Windsor Realty P Ltd, as observed by AO or not? The Ld A.R submitted that the income and expenditure pertaining to the association was not included in the assessment of M/s Windsor Realty P Ltd. It was also submitted that the TDS credit was also not given to M/s Windsor Realty P Ltd.

5. We notice that the tax authorities have mainly relied upon the fact that the Association was registered only on 31.08.2010 and accordingly held that the assessee did not exist prior to its registration. However, according to Ld A.R, this assessee was functioning as an unregistered body and the relevant accounts and finances were managed by M/s Windsor Realty P Ltd through its books of accounts as the trustee of unregistered body. Even though the AO has observed that the receipts and expenditure pertaining to the association should be assessed in the hands of M/s Windsor Realty P Ltd, it is the case of Ld A.R that the same was not so assessed. It is the contention of the assessee

that M/s Windsor Realty P Ltd was acting as the trustee of the unregistered body till the time it was formally registered on 31.08.2010.

6. We notice that the Ld CIT(A) has not examined the above said contentions of the assessee. In our view, the registration made on 31.08.2010 only formalizes the institution that already existed. Hence non-registration of the association should not mean that there was no association of persons. In this regard, gainful reference can be made to the definition of the term "Person" given in sec. 2(31) of the Act. The term "Person" includes "an association of persons or body of individuals, whether incorporated or not. Hence incorporation of AOP or BOI was not made compulsory by the Income tax Act.

7. Hence what is required to be seen is whether an "Association of person" was existing during the year relevant to AY 2010-11 or not. As stated earlier, registration or incorporation is not the mandatory condition for this purpose. It is the contention of the assessee that the AOP was existing as an unregistered body and M/s Windsor Realty P Ltd was acting as trustee of the association. Hence the receipts and expenditure relating to the assessee were not treated as belonging to M/s Windsor Realty P Ltd in its books of account. It was also stated that the TDS amount was not claimed by M/s Windsor Realty P Ltd. We notice that these aspects have not been examined by Ld CIT(A) and in our view these aspects require verification. We notice that the Ld CIT(A) has rendered his decision without addressing these important facts. Hence we are of the view that grounds urged before us require fresh examination at the end of Ld CIT(A). Accordingly we set aside the order passed by Ld CIT(A) and restore all the issues to his file for examining them afresh, after affording adequate opportunity of being heard to the assessee.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 4.7.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

Mumbai; Dated : 4/7/2018

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,

PS

Senior Private Secretary
ITAT, Mumbai