

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” Bench, Mumbai**

**Before Shri Pawan Singh, Judicial Member  
and Shri Ramit Kochar, Accountant Member**

**ITA Nos.1037 & 1038/Mum/2018  
(Assessment Years: 2012-13 & 2013-14)**

Thane Bharat Sahakari Bank  
Ltd.  
Shatatarka, Baji Prabhu  
Deshpande Marg,  
Vishnu Nagar,  
Thane -400 602

v.

Asstt. Commissioner of Income  
Tax, Circle-3  
Asher IT Park, 6<sup>th</sup> Floor,  
Road No. 16Z,  
Wagle Industrial Estate,  
Thane (W), 400604  
Maharashtra

PAN – AAJ1230F

**(Appellant)**

**(Respondent)**

Appellant by: Shri Shekhar A. Desai(CEO) &  
Shri G.G. Sathe, A.Rs

Respondent by: Shri V. Justin, D.R

Date of Hearing: 15.04.2019

Date of Pronouncement: 22.04.2019

**ORDER**

**PER RAMIT KOCHAR, ACCOUNTANT MEMBER**

These two appeals filed by the assessee are directed against two separate appellate order(s) passed by learned Commissioner of Income-tax(Appeals)-2, Nasik (Camp Office Thane), Maharashtra ( hereinafter called “the CIT(A)”) dated 27.12.2017 and 07.11.2017 for assessment year(s)(AY) 2012-13 and 2013-14 respectively, which in turn arises from two separate assessment order(s) passed by learned Assessing Officer ( hereinafter called “the A.O.”) both under Sec.143(3) of the Income tax Act, 1961 (for short ‘I.T Act’), dated 05.01.2015 and

14.03.2016 for AY 2012-13 and 2013-14 respectively. We shall first take up the appeal filed by the assessee for A.Y. 2012-13. Since, similar issues are involved in these two appeals filed by assessee, our decision in AY 2012-13 shall apply mutatis mutandis to the issues arising in assessee's appeal for AY 2013-14.

2. The assessee has raised following grounds of appeal in memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") in ITA No. 1037/Mum/2018 for AY 2012-13:

**"Ground I**

The CIT (A) erred rejecting contention of the Bank that the following amounts received by the Bank are Capital Receipts:

- (1) Entrance Fee Rs.50/- per ordinary member.
- (2) Membership Fees Rs. 1000/- (For 40 shares of Rs.25 each)

The CIT (A) failed to appreciate that

- (1) The Bank confers certain valuable rights on the person when he is admitted to the membership of the Bank.
- (2) Section 2 (47)e.b(VI) recognizes that a transaction by way of becoming member of Co-operative society or acquiring shares in co-operative society is a transfer of 'Capital Asset'.
- (3) Entrances fees collected by the Bank relates to "becoming the member of the Bank and, therefore, is a capital receipt."

The appellant, therefore, contents that CIT (A)'s conclusion that these receipts are revenue receipts is not acceptable.

Without prejudice to our above contention the appellants submit as follows

- (1) Section 2 (14) defines "Capital Assets" to mean property of any kind held by an assessee whether or not connected with his business.
- (2) Explanation 2 to the said section inter alia clarifies that property includes any "right in "or "pertaining with an asset".
- (3) As the bank creates certain rights in the member such as right to vote at the member's meeting and includes the voting to appoint Board of Directors of the bank.
- (4) Entrance Fees received by a service organization are capital receipts because such fees entitle him to avail the benefits as distinguish from the benefits themselves which are separately charged.

The appellant therefore contends that there is no warrant for the CIT (A) to conclude that it is a revenue receipt.

**Ground II**

The appellant crave leave to add to alter or amend any or all the above grounds of appeal."

3. The brief facts of the case are that the assessee is co-operative society, engaged in the business of banking. The assessee is registered under The Maharashtra Cooperative Societies Act, 1960. The functions and operations of the assessee are regulated by the Reserve Bank of India vide its banking license u/s 22 of the Banking Regulation Act. During the course of assessment proceedings conducted by the AO u/s 143(3) read with Section 143(2) of the 1961 Act, it was observed by the A.O from the tax audit report filed by the assessee as per column No.13(d) which relates to amounts not credited to the Profit and Loss account i.e. Entrance Fee of Rs. 74,850/- was not credited to P&L Account . The AO asked assessee as to why the said amount should not be treated as income of the assessee considering the same to be revenue in nature . The assessee in reply submitted as under:

*“10) Membership Fees of Rs. 74,850/- & Entrance Fees of Rs. 23,960/-*

<i>Particulars</i>	<i>Ordinary Members</i>	<i>Nominal Members</i>
<i>No. of members as on 01.04.2011</i>	<i>33200</i>	<i>2853</i>
<i>New Members during F.Y. 2011-12</i>	<i>1497</i>	<i>1198</i>
<i>Registered or ceased to be members during F.Y. 2009-10</i>	<i>1221</i>	<i>109</i>
<i>No. of Members As on 31.03.2012</i>	<i>33476</i>	<i>3942</i>
<i>Entrance fee @ 50 for New Members 1497*50/ Rs.20 for each nominal member 1198*20</i>	<i>74850</i>	<i>23960</i>

*Bank considered such receipts as capital receipts because it confers on the members a valuable right in the form of participation in AGM's and also voting there at.*

*Entrance Fees are collected at the time of admission of a person to the membership of the Bank in terms of the Bye-laws of the Bank. This is a*

*onetime receipt and is credited to the Statutory Reserve account of the Bank that is to say it becomes a part of the profit making apparatus as distinguished from the revenue generated from it.”*

The assessee was treating aforesaid receipts as capital receipts as in the opinion of assessee it confers on members valuable rights in the form of participation in AGMs and also voting rights thereof in terms of bye laws of bank. It was explained by the assessee before the AO that it is one time receipts and is credited to the Statutory Reserve account of the bank and it became a part of the profit making apparatus as distinguished from the revenue generated from it. The A.O rejected the contention of the assessee and held to the same to be revenue in nature and brought both the receipts namely Entrance Fees of Rs. 23,960/- and Membership Fees of Rs.74,850/- to tax by making additions to the income of the assessee , vide assessment order dated 05.01.2015 passed by the AO u/s 143(3) of the 1961 Act.

4. Aggrieved by assessment framed by the AO u/s 143(3) of the 1961 Act vide assessment order dated 05.01.2015, the assessee filed first appeal before learned CIT(A), who dismissed the appeal of the assessee by following the decision of his predecessor for A.Ys. 2009-10 and 2010-11. It was also observed by learned CIT(A) that the similar issue arose in AY 2007-08 and AY 2008-09 which went upto ITAT, Mumbai at behest of the assessee and tribunal was pleased to set aside and restore the matter back to the file of the A.O for *de novo* determination of the issue . The finding of learned CIT(A) while deciding appeal for the impugned assessment year AY 2012-13 vide appellate order dated 27.12.2017, is as under:

*“6.2. I have gone through the facts of the case. Similar issue was decided by my predecessor in the case of the assessee for AY 2009-10 and 2010-11, vide order dated 25.07.2014 which is reproduced as under.*

*“I have carefully considered the facts on record and submission of the appellant. I find that the Membership and Entrance fees has been collected @ Rs.50/- from new ordinary members and Rs.20/- from new nominal members.*

*This collection of fees is in addition to the amount collected for allotment of the shares. In fact, the Membership fees and Entrance fees are in the nature of charge for application forms and processing of application, etc. which are received in the normal course of business of the appellant. The fees so collected is not required to be refunded at any point of time to the members. Therefore, by no stretch of imagination, such fees can be stated to be capital in nature. Therefore, I am of the considered view that Membership & Entrance fees received by the appellant at Rs. 1,38,340/- is in the nature of Revenue receipt and hence the A.O has rightly taxed the same. Ground No. 1 is accordingly dismissed.”*

*The appellant had also filed appeal before the ITAT for AY 2007-08 and 2008-09 and the ITAT had set aside the issue for verification by the AO.*

*6. We have examined the issue. Just because the assessee has stated that these amounts are received by way of provisions of bye-law and are capital in nature, the issue cannot be decided only on submissions. Since the details were not furnished before the A.O about nature of membership granted and whether the shares were allotted or not, the issue cannot be decided only on the nomenclature of the amounts in books.*

*Therefore, in the interest of justice, we restore the issue to the file of the AO to examine the nature of receipt of these amounts and how the amounts are calculated and the ratio thereon, to decide the issue whether the amount do pertain to revenue in nature. Issue is accordingly remitted to the file of the AO and orders of the AO and CIT(A) on this issue are set aside for redoing according to facts and law.*

*It was explained by the AR that the AO after examining the issue held that the receipts on account of membership and entrance fee are revenue receipts. As the issue involved and the facts of the case for the year under consideration are the same as they were in A.Y. 2009-10 and 2010-11, my predecessor's decision as above, is equally applicable in the appellant's case for the year under consideration also. Therefore, following my predecessor's decision as above, it is held that the Membership fee and Entrance fee collected by the appellant is revenue receipt and is therefore, taxable.*

*6.3 The ground of appeal is therefore dismissed.”*

5. Being Aggrieved by the appellate order dated 27.12.2017 passed by learned CIT(A) , the assessee has now filed second appeal before the Tribunal. The learned counsel for the assessee explained before the Bench that entrance fee and membership fees are capital receipts as new members were inducted and there are various rights got vested in person on becoming member of the assessee. The learned counsel for the assessee drew our attention to clause 9 of bye laws which dealt with members and it was explained that on becoming member of the assessee, several valuable rights such as right to attend AGM, right to vote etc get vested in member and hence these receipt are capital

receipts not exigible to tax. It was explained by learned counsel for the assessee that similar issue arose for AY 2007-08 and 2008-09 wherein Mumbai ITAT was pleased in ITA No. 7114/Mum/2010 and 7006/Mum/2011 for AY. 2007-08 and 2008-09 respectively vide common dated 11.07.2012 to restore the matter to the file of the A.O for fresh adjudication . On being asked by the Bench, the learned counsel for the assessee stated that the AO has not yet framed denovo assessment for AY 2007-08 and 2008-09 as of date although details were submitted by the assessee on 3<sup>rd</sup> August 2012 and followed up with further communication lastly on 14<sup>th</sup> October 2016 . It is also explained that the assessee is consistently following with the AO orally but as of date no denovo assessment has been framed by the AO. The copy of said written communication dated 14.10.2016 filed with the AO is now filed before the tribunal, which is placed in file. The assessee has also relied on the decision of the Hon'ble Bombay High Court in the case of CIT v. W.I.A.A. Club Limited (1982) 136 ITR 569(Bom.) and also decision of Hon'ble Bombay High Court in the case of CIT v. Diners Business Services Private Limited (2003) 263 ITR 1(Bom.) to contend that entrance fee and membership fee be treated as capital receipts not exigible to tax.

5.2 The ld. D.R on the other hand explained that these are revenue receipts which should be brought to tax. The learned DR would rely on the appellate order passed by learned CIT(A).

6. We have heard both the parties , perused the material available on record including cited case laws. We have observed that the assessee is co-operative society, engaged in the business of banking. The assessee is registered under The Maharashtra Cooperative Societies Act, 1960. The functions and operations of the assessee are regulated by the Reserve Bank of India vide its banking license u/s 22 of the

Banking Regulation Act. We have observed that the assessee has received entrance fees of Rs.23,960/ and nominal membership fee of Rs.74,850/- towards making of new members . There are different classes of members viz. ordinary and nominal members which are admitted by the assessee. The assessee has explained that on becoming members , certain valuable rights are vested in members such as right to participate in AGM and to vote at AGM and on that basis contentions are raised that these are capital receipts. We have observed that for the earlier years i.e. AY 2007-08 and 2008-09 the same issue came up before the ITAT, Mumbai in assessee's own case in ITA No. 7114/Mum/2010 and 7006/Mum/2011 for AY 2007-08 and 2008-09 respectively, wherein tribunal vide common order dated 11.07.2012 was pleased to restore the matter to the file of the AO for denovo adjudication of the matter after considering terms and conditions attached to different types of membership as contained in bye laws , by holding as under :

*"We have examined the issue. Just because the assessee has stated that these amounts are received by way of provisions of bye-law and are capital in nature, the issue cannot be decided only on submissions. Since the details were not furnished before the AO about the nature of membership granted and whether the shares were allotted or not, the issue cannot be decided only on the nomenclature of the amounts in books. We also notice that any member at the time of admission should subscribe to 40 shares of Rs. 25/- each which means the amount of membership fees per member should be Rs. 1000/- whereas the entrance fees per member was only Rs. 50/- ( ie. 1000:50). When this question was placed before the Ld Counsel, why there is a membership fees of Rs. 65,340/- and Rs. 54,680/- only when entrance fees was at Rs. 1,78,780/- and Rs. 1,51,650/-, which does not tally with the ratios prescribed in the bye-law, he could not explain. Assessee has no objection if this aspect also was examined by the AO. Since the very nature of the amounts received could not be reconciled before us, we were unable to give any finding whether the membership fees or entrance fees accounted as such in the books of account was capital receipt or revenue receipt. Therefore, in the interest of justice, we restore the issue to the file of the AO to examine the nature of receipt of these amounts and how the amounts are calculated and the ratio thereon, to decide the issue whether the amount do pertain to revenue in nature. Issue is accordingly remitted to the file of the AO and orders of the AO and CIT (A) on this issue are set aside for redoing according to facts and law."*

We are of the view that to determine whether the said receipts by way of entrance fees and membership fees are capital receipts or revenue receipts requires detailed analysis of bye laws and various terms and conditions attached to granting of different types of membership by the assessee and rights attached thereto that class of membership. It also requires to be verified whether these receipts are refundable when the member surrenders its membership or ceases to be member. This also requires verification of contentions of the assessee de hors records including bye laws, application for becoming members, minutes of meetings etc. The decision of Hon'ble Supreme Court in the case of Citizen Co-operative Society Limited v. ACIT (2017) 88 taxmann.com 279(SC) : (2018)301 CTR 396(SC) is relevant. Under these circumstances, we are of the view that end of justice will be met if the issues in these appeals are restored to the file of the A.O for fresh adjudication after considering various clauses of bye laws concerning different types of membership and rights attached thereto, application forms for making members and other terms and conditions governing various types of membership including entitlements on becoming member, refund of entrance fees and membership fee on cessation of being member of the assessee, minutes of meetings etc.. The AO is directed to give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law. The AO shall admit all relevant evidences and explanations submitted by assessee in denovo assessment proceedings in its defence. We direct the AO to frame denovo assessment within time allowed by law as we have noted that almost seven years have elapsed since tribunal directed AO to frame denovo assessment for AY 2007-08 and 2008-09 but the AO has not yet passed denovo assessment for those years. The appeal of the assessee is allowed for statistical purposes. We order accordingly.

7. In the result appeal of the assessee in ITA no. 1037/Mum/2018 for AY 2007-08 is allowed for statistical purposes.

8. Our decision in ITA No. 1037/Mum/2018 for AY 2007-08 shall apply *mutatis mutandis* to appeal in ITA No. 1038/Mum/2018 for AY 2008-09 and appeal in ITA No. 1038/Mum/2018 for AY 2008-09 is allowed for statistical purposes.

9. In the result both the appeals i.e. ITA No. 1037/Mum/2018 and ITA No. 1038/Mum/2018 for AY 2007-08 and 2008-09 respectively are allowed for statistical purpose.

Order pronounced in the open court on 22.04.2019

Sd/-

Sd/-

(Pawan Singh)  
JUDICIAL MEMBER

(Ramit Kochar)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 22.04.2019  
Ps. Rohit

**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

