

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

**ITA NO. 2315/MUM/2018 (A.Y: 2012-13)**

M/s. Bhoomi Realtors HDIL, Kalidonia, Wing A, 8 <sup>th</sup> Floor, Opp. Vijay Nagar, Sahar Road, Andheri (E) Mumbai – 400 059  <b>PAN: AAAAB 3440 J</b>	v.	Income Tax Officer – 30(1)(2), C-13, 5 <sup>th</sup> Floor, Pratyakshkar Bhavan, Bandra Kurla Complex, Bandra(E), Mumbai – 400 051
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by : Shri Mahavir Jain**  
**Department by : Shri Kusum Bansal**  
  
**Date of Hearing : 21.02.2019**  
**Date of Pronouncement : 12.04.2019**

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the assessee against the order of the Ld. Commissioner of Income-tax (Appeals)-41, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 24.01.2018 for the Assessment year 2012-13 in treating the interest income of society as interest income of the assessee.
2. Briefly stated the facts are that, assessee is engaged in the business of housing projects. Assessing Officer on perusal of ITS/AIR details

noticed that assessee received interest income of ₹.20,97,846/- from the fixed deposits held with IndusInd Bank. However, he noticed that this interest has not been accounted for in the return of income. Assessee was asked to explain as to why this should not be treated as income of the assessee. The assessee contended that the said interest pertains to the fixed deposit held by Bhoomi Realtors Account Building Maintenance, Bhoomi Realtors Account corpus fund and the interest on these fixed deposits belongs to society and the amounts were handed over to the society along with the interest thereon, and hence the said interest did not belong to the assessee but were part and parcel of the society money and hence not reflected in the books of accounts of the assessee. It was contended that being the promoter of the said society Permanent Account Number has to be given to the bank and therefore, assessee has given its PAN details to the bank. The funds were only in the custody of the assessee which belongs to the society and the entire corpus fund along with interest accrued belongs to the society and it was also clearly mentioned on the face of the TDS certificate also. Not convinced with the submissions of the assessee the Assessing Officer treated the interest income of the society as interest income of the assessee. On appeal the Ld. CIT(A) sustained the action of the Assessing Officer.

3. Ld. Counsel for the assessee submits that identical issue has been decided by the Coordinate Bench of this Tribunal in the case of ACIT v. M/s. Evershine Builders Pvt. Ltd., in ITA.No. 2827/Mum/2018 dated 01.02.2010 wherein it was held that the corpus fund belonging to the building society cannot be assessed in the hands of the builder. Ld. Counsel for the assessee referring to section 5 of Maharashtra Ownership Flats (Regulation of the Promotion of construction, Sale, Management and Transfer) Act, 1963 submits that the promotor shall maintain a separate account in any bank of sums taken by him from persons intending to buy the flats, advances or deposits for formation of cooperative society and if the violation of any such as Acts, the assessee is punishable u/s. 13 of the said Act. Therefore, it is submitted that the corpus fund and interest of the society belongs only to the society and not to the assessee and therefore, no part of the interest shall be assessed in the hands of the assessee.

4. Ld. DR vehemently supported the orders of the Authorities below.

5. Heard rival submissions, perused the orders of the Authorities below and the decision of the Coordinate Bench in the case of ACIT v. M/s. Evershine Builders Pvt. Ltd., (supra), I find that the issue is squarely

covered in favour of the assessee by the Coordinate Bench wherein it has been held as under: -

*“This appeal preferred by the revenue is directed against the order dt.16.1.08 passed by the Id. CIT(A) for the Assessment Year 2002-03 taking following effective ground of appeal.*

*“1. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.6,17,050/- made by the Assessing Officer on account of corpus fund collected by the assessee during the year when the assessee is offering the interest earned on corpus fund for taxation and the corpus fund is not transferred to the society even after a long period of completion of projects.”*

*2. At the time of hearing both parties have agreed that the issue under consideration is covered against the revenue and in favour of the assessee by the order of the Tribunal in the assessee’s group case in ACIT vs. M/s. Seagreen Ever Shine Builders Pvt. Ltd. in ITA No.3287/Mum/2008 for Assessment Year 2004-05 dated 13th March, 2009, therefore, the issue may be decided accordingly.*

*3. We have carefully heard the submissions of the rival parties and perused the material available on record. We find that the assessee company engaged in the business of building construction, distribution of films and hiring of studio equipments, filed return declaring an income of Rs.6,29,547/-. During the course of assessment proceeding it was interalia observed by the AO that the assessee had collected a sum of Rs.10/-per sq.ft. from the flat buyers at the time of sale of flat as contribution towards the fund called “Corpus Fund” for the various projects completed by the assessee in Vasai City. The AO after considering the assessee’s reply which was the same as submitted in the immediately preceding Assessment Year 2001-02, wherein in the assessment the said Corpus Fund was treated as nothing but sale consideration of the flats sold by the assessee in the AY 2001-02, followed the same conclusion and added the amount of Rs.6,17,050/- collected by the assessee as Corpus Fund, as assessee’s business income. On appeal, the Id. CIT(A) while concurring with the decision of Learned Settlement Commission that this would not form part of assessee’s income in view of the clear penal liability prescribed u/s.13 of the MOFA, 1963 for keeping these accounts of Corpus Fund separately and transfer to the society, deleted the addition made by the AO.*

*4. In M/s. Seagreen Ever Shine Builders Pvt. Ltd.(supra), the Tribunal on the identical issue while upholding the order of the Id. CIT(A) in deleting the addition held vide para-4 of its order dt.13th March 2009 as under:*

*“4. After hearing the Id. Departmental Representative and the Id. Counsel, we are of the considered opinion that the order of the Id. CIT(A) is to be upheld. It is the fact that the assessee received aforesaid amount towards corpus fund which was separately kept to be handed over to the society being formed and for the amount collected the assessee acts as Trustee for the cooperative societies till the societies are formed. Since the assessee is following the provisions of the Maharashtra Ownership of Flats Act, 1963, the Corpus Fund cannot be treated as income of the assessee. Accordingly order of the Id. CIT(A) on this issue is upheld.”*

*In the absence of any distinguishing feature brought on record by the revenue we respectfully following the order of the Tribunal(supra), hold that the Corpus Fund of Rs.6,17,050/- collected by the assessee following the provisions of*

*Maharashtra Ownership of Flats Act, 1963, is not the income of the assessee and accordingly we are inclined to uphold the finding of the Id. CIT(A) in deleting the same. The grounds taken by the revenue are therefore rejected.*

6. On a perusal of the order of the Tribunal, it can be observed that the corpus fund maintained by the builder in a separate account which belongs to the society cannot be the income of the assessee. Therefore, when the corpus fund itself cannot be treated as income of the assessee, the builder, in my view the interest accrued thereon also cannot be assessed in the hands of the builder. Thus, respectfully following the said decision, I direct the Assessing Officer to delete the interest income assessed in the hands of the assessee and belong to Building Society. Grounds raised by the assessee are allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on the 12<sup>th</sup> April, 2019

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 12/04/2019  
Giridhar, 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. //True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**