

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1427/Del/2018
Assessment Year: 2014-15

Belvedere Tower Condominium
Association,
DLF City, Phase II,
Gurgaon,
Haryana.

Vs. ITO,
Ward-1(3),
Gurugram.

PAN: AAAAB2964K

(Appellant)

(Respondent)

Assessee by	:	Shri Sudhir Gupta, CA & Shri Sanjesh Jawarani, CA
Revenue by	:	Shri S.L. Anuragi, Sr. DR
Date of Hearing	:	07.05.2019
Date of Pronouncement	:	16.05.2019

ORDER

This appeal by the assessee is directed against the order dated 29th December, 2017 passed by the CIT(A)-, Gurgaon, relating to Assessment Year 2014-15.

2. The ground A. by the assessee reads as under:-

“A. Addition of Interest Income paid on Interest Bearing Maintenance Security IBMS

1. The Assessment is bad in law and against the facts and circumstances of the case.
2. The Addition made is solely based on judgment of Bangalore Club which is a Commercial Club whereas the Assessee is a Resident Welfare Association (RWA).

3. The Learned Assessing Officer has disregarded the fact that the Interest paid to Members is out of Maintenance Security held separately for each member by RWA.

4. The said Interest paid to each members has been made after deduction of Tax at Source and is offered for Taxation in the hands of members. Addition made on this account will lead to Double Taxation which is against the principles of Taxation.”

3. Facts of the case, in brief, are that the assessee is a resident welfare association (RWA) and filed its return of income on 6th August, 2014 declaring the total income at Rs.13,41,806/-. The Assessing Officer, in the order passed u/s 143(3) dated 13th December, 2016 disallowed the amount of Rs.23,98,582/- being interest paid to members from the interest received of Rs.34,84,631/- on the ground that the deduction is not allowed as per section 57(iii) of the IT Act. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer by relying on the decision of the Hon'ble Supreme Court in the case of *Bangalore Club vs. CIT reported in 350 ITR 509*.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Id. counsel for the assessee submitted that the assessee has received an amount of Rs.34, 84,631/- on account of interest bearing maintenance security kept with banks and savings bank interest and has paid Rs.23,98,582/- to members being interest bearing maintenance security. The net interest income of Rs.10,92,439/- was called in the income-tax return as 'Interest income.' Referring to the decision of the Tribunal in the case of sister concern of the assessee, namely, *Belair Condominium Association vs. ITO in ITA No.655/Del/2018, order dated 25th April, 2018*, he

submitted that the Tribunal under identical circumstances has deleted the addition made by the Assessing Officer and upheld by the CIT(A). He accordingly submitted that this being a covered matter in favour of the assessee, the order of the CIT(A) be set aside and the grounds raised by the assessee be deleted.

6. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

7. I have considered the rival arguments made by both the sides and perused the relevant material on record. The only dispute to be decided in the impugned ground is regarding allowability of interest paid on interest bearing maintenance security deposit to the members. I find an identical issued had come up before the Tribunal in the case of sister RWA of the assessee, namely, Belaire Condominium Association (supra). I find the Tribunal in ITA No.655/Del/2018, order dated 25th April, 2018 for assessment year 2014-15, has decided the issue in favour of the assessee by observing as under:-

“10. We have considered the rival submission and perused the order passed by the lower authorities. There is no dispute to the fact that assessee is a registered society form with the basic object to provide for maintenance and repair of common arrears and facilities of the building to its members. There is no dispute about the maintenance charges being collected and utilised towards maintenance. The dispute is regarding the interest income earned by it on deposit with the Bank made out of the security deposit obtained from its members. The AO has held that the interest earned on it is not covered by the principle of mutuality after the judgment of the Supreme Court in the case of Bangalore Club (Supra). The alternative contention of the assessee that interest paid by it on such security deposit is to be set off against interest income earned on such deposit has also been rejected by the AO. After going through the facts of the case we are of the considered opinion that the AO has gone wrong in rejecting this contention of the assessee society. As rightly pointed out by the learned AR that the assessee society has obtained the interest bearing maintenance security called IBMS from the flat owners and such security deposit has been deposited with the Bank on which interest has been earned. Thus, there is a direct nexus in earning interest on such fixed deposit with Bank and payment of interest on the security deposit to the flat owners. The interest expenditure has been incurred wholly and

exclusively for earning such interest income on Bank deposit. As per the Apartment buyers agreement there is an obligation on every buyer to make security deposit and there is corresponding obligation on the society to pay interest on such deposit. Thus, the contention of the learned AR that this interest expenditure has not been incurred to earn interest income is incorrect. The assessee society has paid interest each one after deducting tax at source. Thus, it is not a case of exemption on the principle of mutuality. Such interest paid by the assessee society is taxable in the hands of the Apartment owner. In view of these facts, we are of the view that interest expenditure is to be set off against the interest income. As regards the AO's contention that interest paid to member is not eligible deduction in the case of AOP under Section 40 (ba), we have perused the said Section. This clause excludes registered society from its applicability. Accordingly, this clause will not be applicable to the assessee society. Moreover, as rightly contended by the learned AR Section 40 (ba) is applicable while computing business income. This clause is not applicable while computing income from other sources. There is no prohibition in Section 57 (iii) under which deduction of interest is eligible to the assessee society.

11. Accordingly, we direct the AO to delete the addition of Rs. 1,63,77,013 made on account of the interest. In the result appeal of the assessee is allowed.”

8. Respectfully following the decision of the Tribunal in the case of the sister concern of the assessee, I set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition. Ground A. raised by the assessee is accordingly allowed.

9. Ground B. raised by the assessee relating to the addition on account of depreciation was not pressed by the ld. counsel for the assessee due to smallness of the amount. In absence of any objection from the ld. DR, the ground B. raised by the assessee is dismissed.

10. In the result, the appeal filed by the assessee is partly allowed.

The decision was pronounced in the open court on 16.05.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 16th May, 2019

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi