

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / **ITA No.1210/PUN/2019**
निर्धारण वर्ष / **Assessment Year : 2016-17**

Nivedita Garden Condominium,
Building-D, Nivedita Garden Condominium,
Off NIBM Road, Kondhwa, Pune-411048.

PAN : AAAAN4476A अपीलार्थी/Appellant

Vs.

ITO, Ward-14(3),
Pune. प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri C. H. Naniwadekar
प्रत्यर्थी की ओर से / Respondent by : Shri Pravin Chavan

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| सुनवाई की तारीख / Date of Hearing : 07.10.2019 | घोषणा की तारीख / Date of Pronouncement: 07.10.2019 |
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-7, Pune dated 13.06.2019 for the Assessment Year 2016-17. Applicability of the principle of ‘Mutuality’ to the utilized interest receipts earned from the Banks is the issue for adjudication now.

2. The effective ground raised by the assessee is as under :-

“1. The learned CIT (Appeals) erred on facts and in law in disallowing expenses incurred by the assessee towards common society maintenance without appreciating the facts and submissions made in its proper perspective.”

3. Briefly stated the relevant facts include that the assessee is condominium and registered as AOP under the I.T. Act. The assessee filed

the return of income declaring the total income at Rs.NIL. At the end of the assessment u/s 143(3) of the Act, the Assessing Officer assessed the total income of the assessee at Rs.22,28,180/-. The CIT(A) restricted to the said assessed income at Rs.19,77,838/-.

4. Aggrieved with the said decision of the CIT(A), the assessee is in appeal before the Tribunal with the above extracted ground.

5. Before me, at the outset, ld. Counsel for the assessee filed a copy of the order of the Tribunal in the case of M/s. Marvel Vivacity Condominium vs. ITO vide ITA No.1373/PUN/2018 for the assessment year 2013-14 dated 27.03.2019 and submitted that the disallowance, which is subject matter of adjudication, now stands covered issue and the Tribunal decided the same in favour of the assessee. As per the assessee, when the interest income is utilized for the needs of the condominium interest income is not taxable. In this regard, ld. Counsel brought my attention to the contents of para 10 onwards of the order of the Tribunal (supra) and submitted that the issue should be decided in favour of the assessee in view of following the rule of consistency in the matters.

6. On the other hand, ld. DR for the Revenue relied heavily on the orders of the Assessing Officer and the CIT(A).

7. On hearing both the sides and considering the order of the Tribunal (supra), I find relevant to extract the contents of para 10 onwards of the order of the Tribunal (supra) and the same are extracted hereunder :-

“10. We have heard the rival contentions and perused the record. The limited issue which arises in the present appeal is where the assessee has shown overall loss of ₹ 11,22,908/- and in such circumstances, whether interest earned on FDRs of ₹ 7,77,226/- is separately assessable in the hands of assessee. In cases, **where the assessee has net surplus** from the activities carried on by it and had also interest income on FDRs, then in such circumstances, **interest income is taxable** in the hands of assessee. Such is the proposition laid down by the Hon’ble **Bombay High Court in CIT Vs. Common Effluent Treatment Plant (Thane Belapur) Association** (supra). However, **where the assessee has shown excess of expenditure** over income i.e. where the expenditure is more than receipts earned during the year, then in such circumstances, the **ratio laid down by the Hon’ble High Court of Punjab & Haryana in CIT Vs. Maruti Employees Co-Operative House Building Society Ltd.** (supra) is **squarely applicable**.

11. The Hon’ble High Court of Punjab & Haryana in CIT Vs. Maruti Employees Co-Operative House Building Society Ltd. (supra) has held as under:-

“Held that, there was no merit in the revenue’s contention that the activity of maintenance was not covered under the objects and reasons of the respondent-assessee, which was a registered co-operative society and as such expenses incurred towards an activity beyond the objects and reasons of the respondent-assessee were per se not permissible. The respondent-assessee had drawn income on account of interest based on deposits made by the members of the respondent-assessee for maintenance of their houses and as such liability of the respondent-assessee to pay tax on the same could not be doubted, but since the activity on which the **aforesaid interest income was earned** by the respondent-assessee had per se some expenses connected therewith as a matter of obligation at the hands of the respondent-assessee to its members who had made deposits, **the deduction to the respondent/assessee** on account of expenses incurred towards maintenance of houses **was fully justified.**”

12. Since the assessee before us is housing society and the issue before the Hon’ble High Court of Punjab & Haryana in CIT Vs. Maruti Employees Co-Operative House Building Society Ltd. (supra) was in respect of housing society, applying the same parity of reasoning, we hold that **interest income is to be adjusted against expenditure incurred** by the assessee during the year and **the interest income is not separately assessable** in the hands of assessee. The grounds of appeal raised by assessee are thus, allowed.

13. In the result, appeal of assessee is allowed.”

8. After perusing the aforesaid order of the Tribunal (supra), we find an identical issue came up before the Tribunal in the case of M/s. Marvel Vivacity Condominium (supra) and the Tribunal, following the judgement of the Hon’ble Punjab & Haryana High Court in the case of CIT vs. Maruti Employees Co-Operative House Building Society Ltd., 320 ITR 254 (P&H),

decided the issue in favour of the assessee. Thus, the interest income is to be adjusted against the expenditure incurred by the assessee during the year and the same is not separately assessable in the hands of the assessee. Considering the above facts and following the rule of judicial discipline, I am of the opinion that the issue raised by the assessee in this appeal should be allowed in favour of the assessee. Thus, the ground raised by the assessee is allowed.

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

Order pronounced on this 07th day of October, 2019.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 07th October, 2019.
Sujeet

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-7, Pune;
4. The Pr. CIT-6, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune