

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "एक सदस्य" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1390/PUN/2019

निर्धारण वर्ष / Assessment year : 2014-15

Maharashtra Police Mega City
Co-operative Housing Society Ltd.,
Ganga Complex, First Floor,
Airport Road, Yerawada,
Pune - 411006

..... अपीलार्थी /
Appellant

PAN : AABAM5767C

बनाम v/s

The Income Tax Officer,
Ward - 7(2), Pune

..... प्रत्यर्थी /
Respondent

Assessee by : Mr Tanmay Milind Phadke

Revenue by : Shri Bharat Deoraj Shegaonkar DCIT (DR)

सुनवाई की तारीख / Date of Hearing : 20.01.2020	घोषणा की तारीख / Date of Pronouncement: 21.01.2020
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

This appeal preferred by the assessee emanates from the order of the Ld. CIT(A), Pune-5, Pune, dated 10.06.2019, for the assessment year 2014-15.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is Co-operative Housing Society, who filed its return of income for A.Y 2014-15 on 05.12.2014 declaring total income of Rs.12,340/-. The case was selected for scrutiny and thereafter the assessment was framed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated 19.10.2016 and the total income was determined at Rs.18,05,530/-. Aggrieved by the order of Assessing Officer, assessee carried the matter before Ld.CIT(A), who vide order dated 10.06.2019 (in appeal No. PN/CIT(A)-5/ITO, Ward 7(2), Pune/10379/2018-19) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), the assessee is now in appeal and has raised the following grounds:-

1. *On the facts and in the circumstances of the case and as per the law, the learned Commissioner of Income Tax (Appeals)-5, Pune erred in confirming the disallowance of the expenses of Rs.17,93,187/- made by the learned Assessing Officer for the present assessment year. Thus, the disallowance of Rs.17,93,187/- may be deleted.*
2. *The learned Commissioner of Income Tax (Appeals)-5, Pune erred in upholding the disallowance of Rs.17,93,187/- on the basis of the correlation made by the learned Assessing Officer between the said expenses of Rs.17,93,187/- with the interest income of Rs.19,30,584/- without appreciating the fact and the law that the said expenses were incurred for the purpose of the Appellant's activities and thus, qualify for a deduction as per the provisions of the Act.*
3. *Without prejudice to above, on the facts and in the circumstances of the case and as per law, the learned Commissioner of Income Tax (Appeals)-5, Pune erred in upholding that the expenses of Rs.17,93,187/- are not deductible u/s 57(iii) of the Act.*
4. *On the facts and in the circumstances of the case and as per the law, the learned Commissioner of Income Tax (Appeals)-5, Pune erred in confirming the view of the learned Assessing Officer that the interest income of Rs.19,30,584/- earned by the Appellant on the fixed deposit is chargeable to tax under the head "income from other sources" and not as "the business income".*

All the grounds being interconnected are considered together.

3. During the course of assessment proceedings, the Assessing Officer on perusing the Income & Expenditure Account noticed that the assessee had

received interest on fixed deposit of Rs.19,30,584/- from Nationalized Bank and had debited sum of Rs.17,93,187/- as professional fees and thereafter, the assessee had shown net surplus of Rs.658/-. The assessee was asked to explain as to why interest received on fixed deposit not be considered to be 'Income from other sources' and why deduction claimed in respect of professional fees not be disallowed, to which the assessee made detailed submissions, which were not found acceptable to the Assessing Officer. The Assessing Officer noted that there was no nexus of professional expenses with respect to interest on fixed deposit and that professional fees paid was not necessary for earning the income. He therefore, denied the claim of deduction of Rs.17,93,187/- on account of professional fees, in view of provisions of section 57 of the Act. Aggrieved by the order of Assessing Officer, assessee carried the matter before the CIT(A), who upheld the order of Assessing Officer.

4. Aggrieved by the order of CIT(A), the assessee is now in appeal.

5. Before me the ld. AR reiterated the submissions made before the Assessing Officer and CIT(A) and further submitted that the amount in dispute was paid as professional charges to a firm M/s. M B Athwale & Co., Chartered Accountants for giving various professional services on retainership basis. It was further submitted that professional fees was also paid to a separate legal consultant for giving advice on legal matters concerning the society. It was further submitted that payment of professional fees was for the purpose of society's activities, without which it would not be possible to carry out various functions prescribed under the Act. He further

submitted that the advance which was received from the Members of society to meet the expenditure involved in running the society is temporarily invested in Nationalized Bank and the interest earned is a business income and cannot be assessed as 'Income from other sources'. He therefore, submitted that addition made by Assessing Officer is not called for. He further relied on the decisions in the case of CIT Vs. Maruti Employees Co-Operative House Building Society Ltd. (2010) 320 ITR 254 (P&H), M/s. Marvel Vivacity Condominium Vs. ITO in ITA No.1373/PUN/2018, for A.Y. 2013-14, order dated 27.03.2019 and in the case of Nivedita Garden Condominium Vs. ITO in ITA No.1210/PUN/2019, for A.Y. 2016-17, order dated 07.10.2019. He therefore, submitted that the claim of assessee be allowed.

6. The ld. DR on the other hand supported the orders of Assessing Officer and CIT(A).

7. I have heard the rival submissions and perused the material on record. The issue in the present appeal is about the denial of deduction of professional fees and holding it to be out of other sources. It is an undisputed fact that the assessee is a housing society. I find that identical issue arose before the Tribunal in the case of Nivedita Garden Condominium Vs. ITO (supra) wherein the Tribunal has held that 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. The relevant findings of Tribunal in the case of Nivedita Garden Condominium Vs. ITO (supra) are as under:-

"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 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.”

8. Before me, the Revenue has not pointed out as to how the decision in the case of Nivedita Garden Condominium Vs. ITO (supra) would not be applicable to the present case. I therefore, following the ratio of decision in the case of Nivedita Garden Condominium Vs. ITO (supra), hold that the assessee is eligible for claim of deduction. In view of the aforesaid, the **grounds raised by the assessee are allowed.**

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

Order pronounced on 21st day of January, 2020.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 21st January, 2020.

GCVSR

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), Pune-5, Pune
4. The Pr.CIT, Pune-4, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “एक सदस्य” / DR, ITAT, “SMC” Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.