

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM

ITA No.7079/Mum/2018
(Assessment Year: 2014-15)

Technopolis Co-op. Premises Society Ltd. Technopolis Knowledge Park, Mahakali Caves Road, Chakala, Andheri (E), Mumbai-400 093	Vs.	Dy. CIT-25(1) Mumbai
PAN/GIR No. AACAT 1104 H		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Satish Mody
Respondent by	:	Shri Kailash Gaikwad

Date of Hearing	:	14.10.2020
Date of Pronouncement	:	04.01.2021

ORDER

Per Shamim Yahya, A. M.:

This is an appeal by the assessee directed against order of learned CIT (A)-53, Mumbai dated 07.09.2018 and pertains to assessment year 2014-15.’

2. The grounds of appeal read as under:

Based on the facts and in the circumstances of the case, Technopolis Premises Co-operative Society Ltd. (hereinafter referred as Appellant) respectfully craves leaves to prefer an appeal against the order dated September 7, 2018 passed by the Commissioner of Income Tax (Appeals) – 53, under section 253 of the Income Tax Act, 1961, 1961 (Act) on the following ground:

Ground No.1: Addition in respect of rent income received

1.1 On the facts and circumstances of the case, the learned Commissioner of (Appeal)-53, (‘learned CIT(A)’) has erred in adding a sum of Rs.11,78,100/- on account of rent income received by the Appellant from two of its members under section 22 of the Income Tax Act,1961 (‘Act’).

1.2 In doing, so the learned CIT(A) erred in the disregarding the concept of mutuality.

3. Brief facts of the case are that the Assessing Officer called for the details of income and expenditure incurred during the year. It was found that the assessee had

received rent of Rs.11,78,100/- from M/s. Samsara Shipping Pvt. Ltd. and M/s. Tata Power Co. Ltd. which was not offered to tax. However, on similar facts, Rs.2,00,000/- received for Gym Charges and Rs.2,000/- as rent from M/s. Tata Power Co. Ltd. was offered to tax. For not offering of Rs.11,78,100/- to tax, the assessee claimed that these were the contribution of the members, which cannot be treated as income chargeable to tax. The A.O. held that payments received from same entity was not offered to tax in one instance and claimed not taxable in another instance which cannot be allowed. The A.O. also did not accept the claim of mutuality in respect of the payment received from the two parties. Accordingly, the amount of Rs.11,78,100/- was added to the income.

The A.O. observed that the leasing out of two premises to two members preclude the other member from enjoying the privilege given to them by the appellant and that there is no qualification of lease to restrict this privilege allowing by way of rotation or lottery or any other means by which all the members of the appellant getting equal opportunity for enjoying this privilege. Hence, the A.O. concluded that the concept of mutuality does not apply to the transaction of leasing out two premises to its two members.

4. Upon assessee's appeal, the learned CIT appeals rejected the assessee's contention by observing as under:

6. From the background details called, as per the appellant, "The Technopolis Knowledge Park (TKP) building is a joint venture between M/s. Nelco Ltd. (land owner) and M/s. Tata Housing Development Company Ltd. (developer). The property comprises of built-up area of 351805 sq. ft. with 121 units. It comprises of a basement, ground and five floors. The project commenced in 1997 and TKP was registered as Technopolis Premises CHS Ltd. in 2010.

7. It is noted that the amount of Rs.11,78,100/- is reflected under "Rent and Other Charges" under Contribution from Members in Schedule I of the Income and Expenditure account. The appellant has not addressed why, how and what premises were rented to M/s.Samsara Shipping Pvt. Ltd. and M/s. Tata Power Co. Ltd. How and why other members of the society do not have access to the facilities rented is not disclosed. The "other income" does include rental income which is offered to tax. While the Mutuality Principle is well understood, the appellant has not shown with factual details how the same is applicable to these rents. These members are not entitled to the concerned property based on their ownership as is apparent from the fact that the amount charged is rent and not as maintenance charges for instance. Just because it is paid by a member does not make it covered under the Principle of Mutuality. The ground of appeal is therefore dismissed.

5. Against the above order assessee is in appeal before the ITAT.
6. Learned counsel of the assessee has submitted the following in support of the claim that rent received is exempt on the principle of mutuality. The assessee has also filed the following documents:
 1. Judgement
 - a. Venkatesh Premises Cooperative Society Limited – Hon'ble Supreme Court Judgement on the principle of mutuality
 - b. Lokhandwala Residency Towers CHS Ltd. – Hon'ble ITAT Mumbai for the issue that if rent is received from the members the principle of mutuality applies.
 2. Rental Agreement:
 - a. Letter ated 26.03.2012 from Tata Power for leasing three galas.
 - b. Letters dated 01.07.2010 from Samsara Shipping Private Limited for renting of space.
7. I have heard both the parties and carefully perused the records. Upon careful consideration I find that assessee has submitted certain details in support of its claim. These have not been discussed in the orders of the authorities below. The learned CIT appeals has raised certain queries in his appellate order. It is not discernible that he has confronted the assessee with the same. He has written in his order that assessee has not shown factual details. In my considered opinion, unless CIT appeal puts it across to the assessee, the assessee cannot comply with the learned CIT appeals questions which are in CIT appeals mind. It is further noted as above that learned counsel of the assessee has submitted certain materials including the rental agreements, copies of bylaws , a sketch of the rented portion and certain case laws also.
8. I further note that the assessing officer has wondered as to how the assessee has not explained how on similar reasoning assessee has not treated the gym charges and rent of Rs.2 lacs received from Tata Power as exempt. I find that no explanation in this regard is on record. Furthermore, the assessee has tried to submit that the rental income derived by it is equivalent to rent received by a club from renting its rooms. In this regard, the observation of the CIT appeals is germane that it is not brought on record as to how other members can also take the said premises on rent when the same is let out throughout to the same party.

9. In my considered opinion, these documents referred herein above need to be remitted to the file of learned CIT appeals to examine the issue afresh. Accordingly, I remit the issue the file of learned CIT appeals. Needless to add, the assessee should be granted adequate opportunity of being heard.

10. In the result, the appeal by the assessee stands allowed for statistical purposes.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board on 04.01.2021

Sd/-

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 04.01.2021

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai