

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1-3	604/PUN/2017 605/PUN/2017 606/PUN/2017	Shree Veershaiv Co.Op. Bank Ltd., 517, A-1, Tararanai Chowk, Kolhapur- 416001. PAN: AABAS4688N	ACIT, Circle-2, Kolhapur.	2009-10 2012-13 2013-14
4	2611/PUN/2017	Shree Veershaiv Co.Op. Bank Ltd., 517, A-1, Tararanai Chowk, Kolhapur- 416001. PAN: AABAS4688N	ITO, Ward-2(2), Kolhapur.	2014-15

Assessee by : Shri M. K. Kulkarni
Revenue by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 12.01.2021
घोषणा की तारीख / Date of Pronouncement : 12.01.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are **4 appeals** filed by the assessee directed against the two different orders of Id. Commissioner of Income Tax (Appeals)-2, Kolhapur. Three appeals are directed against the common order of the Id. Commissioner of Income Tax (Appeals)-2, Kolhapur dated 01.12.2016 for the assessment years 2009-10, 2012-13, 2013-14 and another appeal is directed against the order of the Id. Commissioner of Income Tax (Appeals)-2, Kolhapur dated 01.09.2017 for the assessment year 2014-15 respectively.

2. Since the identical issue is in all the above four appeals, we proceed to dispose of the same vide this common order.

3. For the sake of convenience and clarity, the facts relevant to the assessment year 2009-10 in ITA No.604/PUN/2017 are stated herein.

4. Briefly, the facts of the case are that the appellant is a co-operative society engaged in the business of banking. The return of income for the assessment year 2009-10 was filed on 08.10.2009 disclosing a total income of Rs.9,19,216/-. Against the said return of income, the assessment was completed by the Asst. Commissioner of Income Tax, Circle-2, Kolhapur ('the Assessing Officer' for short) vide order dated 28.11.2011 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act' for short) at a total income of Rs.99,68,927/- after making the following additions :-

- (a) Addition on account of subscription fee received from B class members treating as a revenue receipt – Rs.4,51,865/-;
- (b) Addition on account of unclaimed dividend – Rs.1,23,952/-; and,
- (c) Addition u/s 40(ia) on account of deduction u/s 194C and 194H of the Act – Rs.1,03,890/-.

5. Being aggrieved by the above additions, the appellant was preferred an appeal before the Id. CIT(A), who vide his impugned order deleted the addition on account of unclaimed dividend and confirmed the addition on account of Membership fee, as regards, to the disallowance u/s 40(ia) of the Act, the Id. CIT(A) partly allowed the ground by deleting the disallowance of Rs.70,000/- on verification of the proof that the TDS provisions had been actually complied with. As regards the disallowance of commission under Pigmy agent of Rs.1,03,890/-, the same was confirmed following the decision of the Co-ordinate Bench of the Tribunal in the case of Modi Builders, 60 taxman.com 54 (Pune).

6. Being aggrieved by the above decision of the ld. CIT(A), the appellant is before us in the present appeal.

7. During the course of hearing of appeal before us, the ld. Sr. Counsel for the assessee argued only grounds of appeal no.1 and 2 and grounds of appeal no.3 and 4 were not pressed for hearing. Therefore, the only issue which requires to be adjudicated by us whether the Membership fee received from class B members/shareholders is taxable as revenue receipts. The ld. Sr. Counsel vehemently submitted that it is mandatory to transfer the Membership fee or normal entrance fee received from the members to the reserve funds as per Bye Laws of appellant society. There is no distinction between the A class and B class members. In support of this, he also filed the Bye Laws of the appellant society. The Bye Laws of the society should not be contrary to the Maharashtra State Co-operative Society Act, 1960. He also relied on the decision of the Hon'ble Supreme Court in the case of Peerless General Finance & Investment Company Ltd. vs. CIT, 309 CTR 321 in support of the contention that the subscription fee and the membership fee does not form part of the revenue receipt.

8. On the other hand, ld. Sr. DR vehemently opposed the submissions of the ld. Sr. Counsel of the appellant and submitted that the provisions of the Maharashtra State Co-operative Society Act, 1960 cannot be override the provisions of the Income Tax Act, it have no relevance to decide the issue of taxability or otherwise of receipt of Membership fee.

9. We heard the rival submissions and perused the material on record. The only issue which requires to be adjudicated in the present appeal is

whether the Membership fee received by the appellant society from members constitutes revenue receipt or capital receipt? It is undisputed fact that the appellant society had transferred the subscription or membership fee to the reserve fund. This treatment given in the books of account is stated to be in accordance with the provisions of the bylaws of the appellant society and also in conformity with the provisions of the Maharashtra State Co-operative Society Act, 1960. The Hon'ble Apex Court in the case of Peerless General Finance & Investment Company Ltd. (supra) vide para 10 held as follows :-

“10. While it is true that there was no direct focus of the Court on whether subscriptions so received are capital or revenue in nature, we may still advert to the fact that this Court has also, on general principles, held that such subscriptions would be capital receipts, and if they were treated to be income, this would violate the Companies Act. It is, therefore, incorrect to state, as has been stated by the High Court, that the decision in Peerless General Finance and Investment Co. Limited (supra) must be read as not having laid down any absolute proposition of law that all receipts of subscription at the hands of the assessee for these years must be treated as capital receipts. We reiterate that though the Court's focus was not directly on this, yet, a pronouncement by this Court, even if it cannot be strictly called the ratio decidendi of the judgment, would certainly be binding on the High Court. Even otherwise, as we have stated, it is clear that on general principles also such subscription cannot possibly be treated as income. Mr. Ganesh is right in stating that in cases of this nature it would not be possible to go only by the treatment of such subscriptions in the hands of accounts of the assessee itself. In this behalf, he cited a decision of the Division Bench of the Allahabad High Court in Commissioner of Income Tax vs. Sahara Investment India Ltd., reported as Volume 266 ITR page 641 in which the Division Bench followed Peerless General Finance and Investment Co. Limited (supra), and then held as follows:

“In Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India (1992) 75 Comp Cas 12, the Supreme Court on similar facts held that the deposits were capital receipts and not revenue receipts (vide paragraphs 67 & 68 of the aforesaid judgment). That case also pertains to a finance company which used to collect deposits, and credited part of its deposits to the profit and loss account, as in the present case. Hence, the ratio of the said decision, in our opinion, applies to this case also.

It is well settled in income-tax law that book keeping entries are not decisive or determinative of the true nature of the entries as held by the Supreme Court in CIT vs. India Discount Co. Ltd. [1970] 75 ITR 191 and in Godhra Electricity Co. Ltd v. CIT [1997] 225 ITR 746 (SC). It has been held in those decisions that the court has to see the true nature of the receipts and not go only by the entry in the books of account.

We agree with the Tribunal that these deposits are really capital receipts and not revenue receipts. In Chowringhee Sales Bureau P. Ltd. V. CIT [1973] 87 ITR

542 (SC) which was followed in *Sinclair Murray and Co. P. Ltd. V. CIT [1974] 97 ITR 615*, the Supreme Court observed (page 619):

“It is the true nature and quality of the receipt and not the head under which it is entered in the account books that would prove decisive. If a receipt is a trading receipt, the fact that it is not so shown in the account books of the assessee would not prevent the assessing authority from treating it as trading receipt.”

It has been held by the Supreme court that the primary liability and onus is on the Department to prove that a certain receipt is liable to be taxed vide Parimiseti Seetharamamma v. CIT [1965] 57 ITR 532 (SC).

Sri Chopra then relied on the decision of the Supreme Court in CIT v. Lakshmi Vilas Bank Ltd. [1996] 220 ITR 305. In our opinion that decision is also distinguishable because in that case the deposit was forfeited and the result of the transaction was that the bank became full owner of the security and the amount lying in deposit with it became its own money. In the present case there is no such finding that the deposit was forfeited or that at the end of the transaction the security deposit became the property of the assessee or that changed from a capital receipt to a revenue receipt. Hence, that decision is clearly distinguishable.”

This Court, on 21.07.2015, in appeal against the said judgment held as under:

“After reading of the decision of the High Court, we find that the High Court has rightly relied upon the judgment of this Court in “Peerless General Finance & Investment Co. Ltd. & Anr. v. Reserve Bank of India” (1992) 2 SCC 343. Since the case is squarely covered by the judgment, we do not find any merit in these appeals and petitions which are accordingly, dismissed.”

It is also correct to state that there can be no estoppel against a settled position in law [See Commissioner of Income-Tax, Bombay vs. C. Parakh & Co. (India) Ltd. 29 ITR 661 at 665 and Commissioner of Income-Tax, Madras vs. V.MR.P. Firm, Muar (1965) 56 ITR 67.”

10. Thus, reading of the above judgement, we find that a subscription or admission fee normally constitutes a capital receipt and not liable to tax and also transfer of income to reserve fund in compliance with the statutory provisions constitute a charge against the profits of the income. From the very nature of Membership fee collected from members, it is clear that fees was not charged from the members for rendering any specific evidence by society. Further, there is no expressed provision in the Income Tax Act providing that such fees is taxable as revenue receipt. In the light of this

dictum laid down in the above decisions of the Hon'ble Apex Court, we are of the considered opinion that the subscription or admission fee received from the class B members does not constitute a revenue receipt in the hands of the appellant society.

11. We will be failing in our duty, if we do not refer to the decision of the Hon'ble Apex Court in the case of Citizen Co-operative Society Limited vs. ACIT, 397 ITR 1 wherein the Hon'ble Supreme Court held that a particular class of members having no voting rights cannot be treated as members of the society and consequently the principle of mutuality cannot be made applicable. The dictum laid down in this decision had not application to issue on hand, inasmuch as, the issue in the present appeal does not involve the exemption of income on mutuality principle. Therefore, we are of the considered opinion that the income received by the appellant society in the form of subscription or admission fee does not constitute revenue receipt in the hands of the appellant society. Accordingly, the grounds of appeal no.1 and 2 are allowed.

12. In the result, the appeal in ITA No.604/PUN/2017 for the assessment year 2009-10 is partly allowed.

13. Since the grounds raised by the assessee in rest of three appeals i.e. ITA Nos.605, 606 and 2611/PUN/2017 for the assessment years 2012-13, 2013-14 and 2014-15 respectively are identical to grounds raised in ITA No.604/PUN/2017 for the assessment year 2009-10, therefore, our decision in ITA No.604/PUN/2017 for the assessment year 2009-10 shall apply

mutatis mutandis to rest of these three appeals of the assessee. Accordingly, the grounds raised by the assessee in rest of three appeals are partly allowed.

14. Resultantly, all the captioned appeals of the assessee are partly allowed.

Order pronounced on this 12th day of January, 2021.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 12th January, 2021.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Kolhapur.
4. The Pr. CIT-2, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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