

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND
SHRI S.S.GODARA, JUDICIAL MEMBER**

ITA No.	AY.	Appellant	Respondent
1013/Hyd/17	2009-10	The Armed Forces Officers Co-operative Housing Society Ltd., Secunderabad [PAN: AAATT3927H]	Income Tax Officer, Ward-10(3), Hyderabad
1014/Hyd/17	2010-11		
1015/Hyd/17	2011-12		
1016/Hyd/17	2012-13		
1017/Hyd/17	2013-14		Asst.Commissioner of Income Tax, Circle-15(1), Hyderabad
648/Hyd/18	2014-15		

For Assessee : Shri B.Prabhakar, AR
For Revenue : Shri Rohit Mujumdar, DR

Date of Hearing : 12-01-2021
Date of Pronouncement : 01-02-2021

ORDER

PER S.S.GODARA, J.M. :

These six assessee's appeals arise from the CIT(A)-7, Hyderabad's separate orders dated 12-10-2016 for AYs.2009-10 to 2012-13, dated 29-11-2016 for AY.2013-14 & dated 13-11-2017 for AY.2014-15 passed in case Nos.909/CIT(A)-7/2014-15, 910/CIT(A)-7/2014-15, 912/CIT(A)-7/2014-15, 913/CIT(A)-7/2014-15, 261/CIT(A)-7/2015-16, 0163/CIT(A)-7/2016-17; respectively, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case files perused.

2. At the outset, we notice that assessee's appeal for AY.2014-15 ITA 648/Hyd/2018 suffers from delay of 78 days. For the reasons stated in the assessee's condonation petition/affidavit filed on 04-04-2018 attributing delay of 78 days to compilation of necessary records and other factors, we hold the impugned delay is neither intentional nor wilful but for the circumstances beyond the assessee's control. The delay stands condoned.

3. The assessee's identical twin substantive grounds raised in all the instant six appeals challenge correctness of both the lower authorities' action(s) disallowance/adding interest on investments made in nationalised banks of Rs.16,51,240/-, Rs.15,64,689/-, Rs.14,88,072/-, Rs.17,73,263/-, Rs.21,74,527/- & Rs.22,31,150/- in all the assessment years followed by transfer fee payments from incoming and outgoing members of Rs.5,10,000/-, Rs.1,26,050/- and Rs.3,94,000/- in only former three assessment years; respectively, thereby declining "mutuality" claim raised at its behest. We notice during the course of hearing that the instant twin issues are no more *res integra*. This tribunal's co-ordinate bench's common order dt.26-08-2015 for AYs.2007-08 and 2008-09 has upheld the assessee's mutuality claim regarding transfer fee and declined the very relief *qua* interest on investments as follows:

"2. Briefly stated, assessee is a housing co-operative society and has claimed certain incomes as exempt on 'Principles of mutuality'. Assessing Officer (AO) however, did not agree and brought to tax the amount of Rs. 16,35,690/- in AY. 2007-08 and Rs. 9,25,475/- in AY. 2008-09 as transfer fee received. It was the contention of the AO that

the transfer fee charged by the co-operative housing society on the Members transferring their plots was not a voluntary contribution and no mutuality among the Members existed, since there is no identity between contributors and participators. While denying exemption claimed by assessee on the above amounts, AO relied on various judicial decisions on the issue of 'Principles of mutuality'. As per AO, the transfer fee paid by person who would be out going member cannot participate in the profits, as against transferee who would be participating in the profits, but not in the payment. As such, identity between the contributor and participant is lost.

2.1 Ld. CIT(A) following the judgment of Hon'ble High Court in the case of Sind Co-operative Housing Society Vs. ITO [317 ITR 47] (Bom HC) and ITD decision in the case of ITO Vs. Damodar Bhuvan CHS Ltd., [45 (11) ITCL 255] held that transfer fee paid would be exempt from tax on the 'Principle of mutuality'. Revenue was aggrieved and is contesting that the 'Principles of mutuality' does not apply to the transfer fee received.

2.2 After considering the rival submissions and perusal of the order of CIT(A), we do not see any reason to interfere with the same. Ld. CIT(A) has in fact considered not only the facts of the case but also the judgment of Hon'ble Bombay High Court which is squarely applicable. His order is as under:

"5.3 Perused the submissions of the appellant and the observations of the Assessing Officer. As could be seen from the facts of the case, the appellant society was collecting the transfer fee from the outgoing members on transferring the property located in the colony maintained by it, as per the bye-laws and such amount was shown to have been utilized for the common purposes such as maintenance of property, roads, and other facilities, etc. As per the Assessing Officer, the transfer fee charged by Co-operative Society on the members, who transfer their plots was not voluntary and there exists no mutuality, since there is no identity between the contributors and the participators, with the contributors going out and the participators coming into the club. However, the judicial decisions in this regard held that the amounts collected / paid voluntarily or not would not make any difference to the principle of mutuality, as long as the same is governed by the bye-laws of the society, and the arrangements made under the bye-laws constitute a contract between the society and the members, which is voluntarily entered into and voluntarily conducted as matter of convenience for running the society. Hence, the transfer fee collected by the society, from the members on transfer of property, as per the bye-laws may not change the principle of mutuality. The other aspect referred by the Assessing Officer is class of Members, such as contributors and participators and the members as well as Associate

members. As per the Assessing Officer the outgoing member, who sells the property pays the fee, but does not participate in the profits as a contributor, whereas the incoming member after purchase of plot participates in profits, as such there is no principle of mutuality. However, this issue was addressed by High Court of Bombay in the case of Sind Co-op. Housing Societies Vs. ITO (317 ITR 047), wherein it was held by the Hon'ble High Court as under:

"We may now deal with some other submissions advanced on behalf of the revenue. It was contended that the class of members means, members such as permanent, temporary, honorary, etc. This is based on the assumption that there can be different classes of members. In a co-operative housing society there can be members and associate members. We have already quoted from the judgments where reference is to members as a class and that class may be diminished by members going out or increased by the' members coming in. But the class remains the same. As already noted by the Supreme Court in Bankipur Club (supra), the identity must be as a class of contributors and participants and it does not matter that the class may be diminished or increased by members going out or coming in. Similarly, it is not necessary that each member should contribute or each member should participate in the surplus and get back from the surplus what he has paid, as long as they have control over the surplus."

Thus, based on the ratio of the decision and facts as applicable to the case, it is reasonable to hold that the members as contributors as well as participators, including the new members remain as a class and such class may increase with new members joining and diminishing with some other members going out, without affecting the principle of mutuality. Hence, the exemption claimed on the income by way of transfer fee, held to be allowable to the assessee. Accordingly, the additions of Rs.16,35,690/- for A.Y. 2007-08 and Rs.9,25,475/- for A.Y. 2008-09, are held to be unsustainable. This ground of appeal for both the years, treated as allowed".

3. Since the CIT(A) has followed the Hon'ble Bombay High Court's order and co-ordinate bench is also following the same principle in various cases, we do not see any reason to interfere with the order of CIT(A). Accordingly, the grounds raised by Revenue on this issue are rejected and both the appeals of Revenue in ITA Nos. 80 & 81/Hyd/2015 are accordingly dismissed.

4. The AO while completing the assessment has also noticed that the appellant-society has earned interest from deposits made with the banks and interest on bank balances as exemption from tax on the

'Principles of mutuality'. Such amounts were quantified at Rs. 19,02,097/- for AY. 2007-08 and Rs. 19,85,909/- for AY. 2008-09. AO relying on the decision of jurisdictional High Court in the case of Secunderabad Club [340 ITR 121] did not allow assessee's claim. Assessee tried to distinguish the status and activities of the said club from that of a housing society and argued that the decision of Secunderabad Club [340 ITR 121] (supra) does not apply to assessee's facts. Ld. CIT(A) however, based on the decision of jurisdictional High Court held that interest amount received from the banks on surplus funds does not come into the purview of 'Principles of mutuality' and therefore, the addition made by AO was upheld. Assessee is aggrieved and raised as many as 10 grounds on the issue. The grounds are more or less in the form of written submissions on the issue and the only issue being agitated is whether interest received from bank deposits/balances is covered by 'Principles of mutuality' or not?

5. After considering the rival contentions and detailed submissions made by the Ld. Counsel on the issue, we are of the opinion that the order of CIT(A) is to be upheld. His detailed order in para 6.3 is as under:

"6.3 Perused the submissions of appellant, and the observations of the Assessing Officer. As could be noticed from the facts of the case, the appellant society has earned interest from the deposits made with banks and interest on balances with the credit balances in the savings bank account and claimed exemption from tax, on the principle of mutuality. Such amounts are quantified at Rs. 19,02,097/- for A.Y. 2007-08 and Rs.19,85,909/- for A.Y. 2008-

09. However, the Assessing Officer relied on the decision of A.P. High Court in the case of Secunderabad Club, (340 ITR 121) (2012) and negated the claim of the assessee, whereas the appellant tried to distinguish the status and activities of club from that of a Housing Society and argued on the non-application of the said decision on the facts of the case, and instead relied on the decisions of Delhi High Court in the case of Telangana Co-op Group Housing Society 37 ITCL 119 (2011) and DIT(E) Vs. All India Oriental Bank of Commerce Welfare Society 184 CTR 274 (2013). In this regard, it is relevant to refer to the fact that on the said issue of principle of mutuality in the case of CIT Vs. Secunderabad Club, the Hon'ble High Court of Andhra Pradesh distinguished the decisions of Delhi High Court in the case of Delhi Gymkhana Club (339 ITR 525) and concurred with the decision of Karnataka High Court in the case of Bangalore Club (257 ITR 263) and the decision of Karnataka High Court held to be final with the SLP filed by Bangalore Club on similar issue rejected by Supreme Court.

Essence of the decision of Hon'ble High Court of Andhra Pradesh, on the issue, in the case of Secunderabad Club runs as under:-

"34. Reading the above observations, it is not possible to accept the contention of the counsel for the assessee that interest earned even from third parties would be exempt from the charge of income-tax, in all types of transactions. The ratio therein is that, if an incorporated entity is engaged in trade, the profit from it, even if they are transactions with members, would be taxable and the principle of mutuality would have no application.

35. The decision of this court was long prior to Bankipur Club Ltd. (1997) 226 ITR 97 (SC) and Chelmsford Club (2000) 243 ITR 89 (SC), and no reference was made therein to Royal Western India Turf Club. (1953) 24 ITR 551 (SC). As we have considered these cases in the light of the law laid down by the Supreme Court in these three judgments, we do not feel compelled to apply the ratio in Natraj Finance Corporation (1988) 169 ITR 732 (ap). We, however, hasten to add that, if an association of person receives contribution from its own members and earns interest income by lending the money to them from out of the contribution, the principle of mutuality may apply rendering such income non-taxable. As unregistered Association, like the Secunderabad club, parking their surplus funds with corporate member banks to earn interest is altogether different from an association of persons lending money only to its members. Further, as held by the Supreme Court in Bankipur Club Ltd. (1997) 226 ITR 97 (sc), "A host of factors need to be considered to arrive at a conclusion as to at what point does the relationship of mutuality end, and that of trading begin". Furthermore, the nature of the transaction between the assessee and the bank/banks would disqualify application of the principle of mutuality. We are, therefore, of the considered opinion that the impugned orders of the Income Tax Appellate Tribunal are liable to be set aside".

Based on the ratio of the decision of Hon'ble High Court in the case of Secunderabad Club (supra), and applying the same to the facts of the case, I am of the opinion that the decision of Hon'ble High Court (supra) is ,squarely applicable to the facts of the case, and the interest earned by the society, from the banks, would not be eligible for exemption from income tax. Accordingly, the additions of Rs.19,02,097/- and Rs.19,85,909/- made for A.Ys. 2007-08 and 2008-09, respectively, are upheld. Thus, this ground of appeal for both the year, treated as dismissed".

6. Since jurisdictional High Court has clearly held that interest received from third parties cannot be exempted under the 'Principles of mutuality', we reject assessee's contentions, as the interest earned is not from the Members but from the third person i.e., bank in which

assessee's surplus funds are placed. Since the income received is from third party, we are of the opinion that 'Principles of mutuality' does not apply to the present facts. There is no merit in assessee's grounds. Accordingly, they are rejected. Consequently, assessee's appeals are dismissed".

4. A perusal of the assessee's identical pleadings in all these six appeals fails to pin point any factual distinction *qua* the interest issue in these assessment years before us. We therefore adopt judicial consistency and partly confirm both the lower authorities' action disallowing the assessee's mutuality claim on interest on investments made in nationalised banks. The other issue of mutuality relief pertaining to transfer fee stands accepted in view of the foregoing detailed reasoning adopted *mutatis mutandis* herein.

5. The assessee's former three appeals ITA Nos.1013/Hyd/2017, 1014/Hyd/2017 & 1015/Hyd/2017 are partly allowed, whereas the latter three appeals ITA Nos.1016/Hyd/2017, 1017/Hyd/2017 & 648/Hyd/2018 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 1st of February, 2021

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Hyderabad, Dated: 01-02-2021

Copy to :

1.The Armed Forces Officers Co-Op. Housing Society Limited, Sainikpuri, Secunderabad.

2.The Asst.Commissioner of Income Tax, Circle-15(1), Hyderabad.

3.The Income Tax Officer, Ward-10(3), Hyderabad.

4.CIT(Appeals)-7, Hyderabad.

5.Pr.CIT-7, Hyderabad.

6.D.R. ITAT, Hyderabad.

7.Guard File.