

IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 1204/Mum/2019 (Assessment Year 2015-16)

Agora Plaza Commercial Premises Co-op Society Ltd. Agora Plaza CHSL, Society Office, S.V.Road, Opp. Flyover, Borivali(West) Mumbai-400 092  PAN : AABAA2934K  (Appellant)	Vs.	ITO BKC, Building NO.C-B Mumbai-400 051       (Respondent)
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Assessee by	Shri Meeta Panchal
Department by	Shri Brajendra Kumar
Date of Hearing	12.08.2021
Date of Pronouncement	13.08.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the Assessee is directed against the order of learned CIT(A)-44 dated 31.12.2018 and pertains to Assessment Year 2015-16.

2. The grounds of appeal read as under :

- The commissioner of Income Tax (Appeal) dismissed the case as the challan of Rs.1000/- was not paid separately.
- The challan was paid immediately after the hearing.
- However, the case was rejected by following the decision of Hon'ble Hyderabad ITAT as not maintainable.
- Though, the CIT (A) had agreed to all the explanations and case-laws provided by us.
- As per section 80P (2)(d) of the Income Tax Act 1961, only interest or dividend derived by a co-operative society from its investments with any other co-operative society is eligible for deduction and the interest in respect of which deduction is derived from bank.

- Hence, interest received by co-operative society from co-operative bank is nothing but interest received from co-operative society.
- Therefore, no tax is to be paid by the society on interest received from Co-operative banks.

3. At the outset, we note that in this case, Ld.CIT(A) has dismissed the assessee's appeal as unadmitted despite noting that assessee has duly paid the prescribed fee of Rs. 1000/- even when the appeal was pending before him as there was some confusion regarding the earlier payment, which was on account of outstanding tax. The facts in this regard recorded by Ld.CIT(A) himself reads as under:-

4. From appeal memo it is observed that in the Column No. 16, which gives the details of appeals fees paid the appellant has shown payment of Rs.76,508/- on 10.08.2017. Since the maximum appeal fees prescribed u/s 249 of the Act is Rs. 1000/-, so during the course of hearing the Ld. AR was asked to explain the nature of said payment of Rs. 76,508/- on 10.08.2017 and also as to whether, the appellant has filed prescribed appeal fees on or before the date of filing of present appeal. In response to the same, the appellant's Ld. AR vide order sheet entry dated 21.12.2018 explained that the said payment of Rs. 76,508/- on 10.08.2017, as mentioned in the appeal memo, represents payments towards outstanding demand and by mistake the appellant has not paid the appeal fees on or before filing of present appeal. He further submitted that on 21.12.2018, the appellant has paid Rs. 1000/- towards appeal fees and submitted a copy of challan thereof. In view of the same he requested to admit the present appeal.

4. Thereafter, Ld.CIT(A) proceeded to examining the law in this regard and meaning of word 'shall' in provisions of sec. 249(1). Thereafter, refer in to few Tribunals decisions where Tribunal has dismiss the appeal on account non payment required fee, he dismissed the assessee's appeal as non maintainable.

5. Against the above order, assessee is in appeal before us.

6. We have heard both the parties and perused the records. We find that it is settled law that interest of justice should prevail where over the web of hyper technicalities. Here, we note that it was duly stated to Ld.CIT(A) that the amount paid by the

assessee earlier of Rs. 76,508/- was mistakenly taken to have included to Rs.1000/- appeal fee paid and after the mistake was found during the course of appellate proceedings itself, the assessee paid an amount and produced challan before the Ld.CIT(A). We find that on the facts and circumstances of this case, the appeal was valid and Ld.CIT(A) should have adjudicated the issue on merits. The case laws from ITAT referred by Ld.CIT(A) are not relevant as in those facts ITAT has decided on the appeals, which were made before the ITAT. Moreover, the facts as prevailing in this case are not pari materia with the facts appearing therein. Without examining these aspects, Ld.CIT(A) has erred in dismissing the assessee's appeal as not maintainable. Accordingly, we remit the issue to the file of Ld.CIT(A). Ld.CIT(A) is directed to pass an order on merits of the case after giving the assessee proper opportunity of being heard.

7. In the result, appeal by the assessee stands allowed for statistical purpose.

Pronounced in the open court on 13.08.2021

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 13/08/2021

Sr.PS. Thirumalesh

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai