

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI**

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

**ITA No.1054/Del/2021
[Assessment Year : 2014-15]**

Galleria Condominium Association, Galleria Building, DLF Phase IV, DLF City, Gurgaon, Haryana-122002. PAN-AAAAG3018P	vs	ITO, Ward-1(3), Gurgaon.
APPELLANT		RESPONDENT
Appellant by	Shri Rishabh Aggarwal, CA & Ms. Jaishree, CA	
Respondent by	Shri Mithalesh Kumar Pandey, Sr. DR	
Date of Hearing	13.09.2022	
Date of Pronouncement	19.09.2022	

ORDER

PER CHANDRA MOHAN GARG, JM :

This appeal filed by the assessee against the order of Ld. CIT(A)-2, Gurgaon in Appeal No.447/2016-17 dated 28.11.2017 for the assessment year 2014-15.

2. The grounds raised by the assessee are as follows:-

1. *"That the assessment order passed is illegal, invalid and void.*
2. *That the reasons recorded u/s 147 of the I.T. Act, 1961 by the Ld. A.O. were merely based on the suspicion and without any tangible material so as to* suggest any escapement of income. Hence the reassessment proceedings are liable to be quashed.*
3. *Whether the Ld. AO is not justified in disallowing the claim of Interest income on the basis of concept of mutuality of Rs. 41,69,909/- under section 80P(2)(d) of the Income Tax Act, 1961. As interest income is disbursed to members who had contributed to it.*

4. *Further as per verdict of Bangalore Club v/s Commissioner of Income Tax, Interest income is not taxable as concept of mutuality has been extended to define groups of people who contribute to a common fund, controlled by the group, for a common benefit. Any amount surplus to that needed to pursue the common purpose is said to be simply an increase of the common fund and as such neither considered income nor taxable.*
5. *That the Ld. AO is not justified in computing the additional income of Rs. 17,05,310/- as house Property, as amount received by AOP is for maintenance charges and common charges which is further paid by AOP as an expenses and is not chargeable on the basis of concept of mutuality.*
6. *That the Ld. AO is not justified in making addition of Rs. 1,09,11,496/- as business income without considering the Business expenses incurred during the year. Assesse just collect the amount form the members of the association and disbursed it for respected expenses.*
7. *The assessee is a Residents Welfare Association. The basic nature of its operations is collecting monthly maintenance charges. These are used to provide the common facilities and maintenance like security, housekeeping, cleanliness, etc. Since we have a lot of businesses in the complex, they have to deduct TDS on these maintenance charges paid. All the Maintenance are for common benefit of RWA. As such on mutuality concept they do not come under the tax preview, But TDS has to be deducted on this by member establishment paying the maintenance as per Income Tax Provisions.*
8. *Further Total Receipts as per 26AS is 88,82,626/- but A.O take 1,09.11,496 as addition in assessment order, which is not justified in computing the additional income.*

9. *That the Ld. AO is not justified in computing the additional income, and order issued by AO and CIT(A) is void as they did not considered Return file by Assessee as on 27-08-2014.*
10. *That the assessment order is void and invalid in law as A.O. not take effect of Tax deducted at source u/s 1941, 194A, 194J and 194C, amount Rs. 14,47,707/- as per 26AS attached.*
11. *That the assessment order is void and invalid in law as A.O. not take effect of self-assessment tax paid u/s 140 as per 26AS.*
12. *That the Ld. AO passed the order without considering the expenses incurred during the year under consideration which is not justifiable.*
13. *That the order passed by Ld. AO is without following the principal of natural Justice.*
14. *That income which is assessed by AO is not based on concept of mutuality. AO passed the order in harsh manner only considering the figures of 26AS, which is not valid in the eye of law.*
15. *That the appellant reserves the right to amend, delete, add, substitute, modify or alter any one or more of the grounds of appeal at the time of hearing.”*

3. Ld. Sr. DR, in all fairness, agreed to the submissions of the Ld. Authorized Representative of the assessee that the ITAT, “SMC” Bench vide order dated **21.02.2022** in **ITA Nos. 1038, 1052 & 1053/Del/2021 for the Assessment Years 2009-10, 2010-11, 2011-12** respectively, has restored the similar issue to the file of Assessing Officer (“AO”) for fresh assessment. Therefore, Department has no objection if the matter for present Assessment Year 2014-15 is also restored to the file of AO in the similar line for a fresh assessment.

4. On careful consideration of the submissions of the rival parties and perusal of Tribunal order dated 21.02.2022 in ITA Nos. 1038, 1052 & 1053/Del/2021 (supra) has restored the matter for a fresh assessment to the file of AO with following observations and conclusions:-

8. *“The ld. Assessing Officer noted that assessee had shown interest income of Rs.2,91,155/- in the assessment year 2009-10; Rs1,10,476/- in assessment year 2010-11 and Rs.2,92,089/- in assessment year 2011-12. Similarly, income from house property has been earned of Rs.7,56,370/- in assessment year 2009-10; Rs.5,92,715/- in assessment year 2010-11 and Rs.6,70,010/- in assessment year 2011-12. Similarly, there was marginal professional fee earned by the assessee of Rs.5,727/- in assessment year 2009-10; and Rs.33,633/- in assessment year 2010-11 and Rs.49,411/- in assessment year 2011-12, received from M/s. Access Mobile India Pvt. Ltd. and Cimigo India Pvt Ltd. and also brokerage and commission of Rs.5,000/- in all the three years. It appears that before the Assessing Officer, assessee had agreed that it is not covered by Section 80P(2)(d) of the Act. However, it has claimed the principal of mutuality as assessee is a resident welfare association. The ld. Assessing Officer has taxed the interest income from the deposit from the bank and stated that it is not covered under principal of mutuality following the judgement of the Hon’ble Supreme Court in the case of Bangalore Club Vs. Commissioner of Income Tax (2013) 350 ITR 509 (SC) and also has computed income from house property under Section 23 and also taxed the professional fee as business income.*
9. *The ld. CIT (Appeals) in its consolidated order has noted that assessee has not pressed the grounds relating to taxing of income under the house property, interest income and income from professional charges, albeit had requested to allow the proportionate expenses against any Income charged to tax. However, the ld. CIT (Appeals) held that income of the house*

property was computed under Section 24 of the Act and, therefore, no further deduction can be allowed and in so far as bank interest hardly any expenditure has been made. He held that, in the absence of other details of expenditure, the expenses cannot be allowed. Similar submissions were made for the other two years.

10. *From the perusal of both the orders, we are unable to appreciate the facts of the case nor there is any proper explanation or reply filed by the assessee. Before the Ld. CIT(A) it appears that substantive grounds were not pressed but now in the grounds of appeal assessee has challenged not only the validity of re-opening, but also contending that principle of mutuality is applicable in the case of the assessee and deduction of common expenses incurred from the rental income received from house property has not been provided and also the fact that tax deducted at source has not been given due credit of. It appears that due to non-cooperation by the erstwhile management of the association and internal disputes the case of the assessee was not represented well either before the Assessing Officer or before the CIT (Appeals). Even the orders of the ld. CIT (Appeals) and the Assessing Officer are very cryptic without high-lighting the facts of the case as to why the principle of mutuality is not applicable or why certain expenses incurred by the assessee cannot be allowed which has been raised before us in the grounds of appeal. Before the ld. CIT (Appeals) the assessee has not pressed the grounds whereas before us same grounds have been challenged. Looking to the entirety of facts and circumstances that that assessee could not represent the case, therefore, in the interest of justice, we feel that the grounds raised in all the three years are remanded back to the file of the Assessing Officer to make fresh assessment, after hearing and giving due opportunity to the assessee and assessee should also substantiate its case before the Assessing Officer.”*

5. In view of the above and as agreed by Ld. Authorized Representatives of both the parties, the appeal of the assessee for AY 2014-15 is also remanded

back to the file of AO for fresh assessment. Consequential the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 19th September, 2022.

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI