

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No.200/Ahd/2022
(Assessment Year: 2017-18)

Dev Castle Ktoy Owners Association, Dev Castle, Near Govindvadi Isanpur, Ahmedabad	Vs.	ITO Ward-3(2)(6), Ahmedabad
[PAN No.AACTD1174E]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Sanjay R Shah, A.R.
Respondent by:	Shri M. Anand Kumar, Sr. D.R.

Date of Hearing	21.12.2022
Date of Pronouncement	23.12.2022

ORDER

The appeal filed by the assessee is against the order passed by the Ld. CIT(Appeals), National Faceless Appeal Centre (in short “NFAC”), Delhi on 25.03.2022 for A.Y. 2017-18.

2. The grounds of appeal raised by the assessee are as under:

“1. The Learned C.I.T.(Appeals) erred in confirming the addition of Rs.8,32,052/- received by the Appellant by way of interest from banks on the deposits made by it out of the maintenance deposit/ fund received from its members. It is submitted that the Appellant is required to maintain the society and incur common expense of the society out of the income received from the maintenance deposits, and thus, there is an overriding charge and obligation on the income earned by the Appellant out of the deployment of the maintenance deposit and the same should not have been taxed in the hands of the appellant. It is submitted that it be so held now and the addition made by the learned Assessing Officer and as confirmed by C.I.T.(Appeals) be deleted.

2. The Assessing Officer wrongly assessed the Appellant as Trust when the Appellant is a Co-operative Society. It is submitted that it be so held now.

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3. *Without prejudice to above, the amount of Rs.8,32,052/- should not have been taxed by the Learned Assessing Officer and confirmed by C.I.T.(Appeals) on the principle of mutuality as the said income has been received on account of deployment of the funds of the members of the society, and hence, are governed by the principle of mutuality. It is submitted that it be so held now and the addition made be deleted.*

4. *Without prejudice to the forgoings, if at all, the amount of Rs.8,32,052/- is held to be taxable appropriate expenditure out of the total expenditure of Rs.29,87,472/- incurred by the society towards maintenance of the society be allowed to it as deduction. It is submitted that it be so held now.*

5. *Without prejudice to any of the foregoings, the Appellant should have been granted deduction u/s.80P(2)(c) for a sum of Rs.50,000/- as the Appellant is a co-operative society. It is submitted that it be so held now and the deduction of Rs.50,000/- be granted to it while computing its income.*

Your Appellant reserves the right to add, alter, amend and/ or withdraw any of the above Grounds of Appeal.”

3. The assessee is a resident Co-operative Housing Society and engaged in business of income earning activities. The assessee society is engaged in only maintenance of the residential society. The assessee e-filed its return of income on 23.03.2017 thereby, declaring total income at Rs. NIL. Thereafter, case was selected for limited scrutiny and the Assessing Officer observed that the contribution from members residing in the society and availing common facilities. The assessee society received income in respect of Axis Bank FDR interest, HDFC FDR interest and Savings Bank interest. The assessee in return of income claim deduction under Section 57 of the Act at Rs. 29,87,472/- and show net income of Rs. 21,844/- and claimed the said amount of Rs. 21,844/- as deduction under Section 80P of the Act. The Assessing Officer made addition of Rs. 8,32,052/- towards Fixed Deposit with Axis Bank and HDFC Bank as well as Savings Bank regarding the interest element. The Assessing Officer also rejected the claim under Section 80P of the assessee.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) dismiss the appeal of the assessee.

5. The Ld. A.R. submitted that the assessee is Co-operative Housing Maintenance Society of a Residential Flats in Ahmedabad and is not engaged in any business or any income earning activities. The society collected deposits from the members for maintenance of the society and it utilized for the same. All the interest income is from the deposit placed with the bank out of the only funds collected from the members as maintenance deposit. This was the first year of the society and so there was no funds accumulated from the surplus. The Ld. A.R. submitted that the income derive from collecting of funds for maintenance of the society is not taxable under principle of mutuality. The Ld. A.R. relied upon the decision of Hon'ble Supreme Court in case of Bangalore Club vs. CIT 29 taxman.com & ITO vs. Venkatesh Premises Co Op. Societies Ltd. 81 taxman.com 137. The Ld. A.R. further relied upon the sale deed between the flat holder and Devdeep Malls Developers Pvt. Ltd. wherein it has been categorically stated that the maintenance charges should be collected from the members of the flat owners and the same should be utilized for maintenance of the housing complex/residential premises. The Ld. A.R. relied upon the decision of Hon'ble Karnataka High Court in case of Canara Bank Golden Jubilee Staff Welfare Fund vs. DCIT 308 ITR 202, decision of Hon'ble Delhi High Court in case of CIT vs. Delhi Gymkhana Club Ltd. 339 ITR 525, decision of Hon'ble Bombay High Court in case of Sind Co-op. Hsg. Society vs. ITO 317 ITR 47, decision of Hon'ble Delhi High Court in case of CIT vs. Talangang Co-op. Housing Society Ltd. 339 ITR 518.

The Ld. A.R. also relied upon the decision of Ahmedabad Tribunal in case of Manekbaug Co-op. Housing Society Ltd. (ITA No. 2133/Ahd/2006 order dated 05.03.2010).

6. The Ld. D.R. relied upon the order of CIT(A) and the order of the Assessment Order.

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that from the Balance Sheet the maintenance deposit is excessively used for maintenance of the residential premises and therefore, the collection of maintenance deposits are kept as fixed deposits in Axis Bank and HDFC Bank. From the sale deed also the said element of maintenance deposits has been collected from the owners of the flat. The decision of the Ahmedabad Tribunal in case of Manekbuag Co-op. Housing Society Ltd. has clearly given the guidelines that when the main object of the society is to manage, administer, operate, supervise and make available the common facilities and maintains of its members to meet the expense on account of maintenance the housing society collected deposits from its members made deposits and earned interest thereon from banks which is squarely covered by the decision of Hon'ble Gujarat High Court in case of CIT vs. Adarsh Co-operative Housing Society Ltd. 213 ITR 677 which was cited by the Ld. A.R. at the time of hearing. The decision of Hon'ble Bombay High Court in case of Sind Co-op. Hsg. Society (supra) is squarely applicable in the present case as the income earned by the society on account of interest on Fixed Deposits from its members for the purpose of maintenance will attract the concept of mutuality and accordingly the

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income will be subject to exemption if any surplus is there. Thus, Ground No. 1 & 2 are allowed.

8. As regards, Ground Nos. 3, 4 & 5 are alternative argument and since the main ground is allowed the same does not sustain.

9. In the result, the appeal filed by the assessee is partly allowed.

This Order pronounced in Open Court on	23/12/2022
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 23/12/2022

TANMAY, Sr. PS

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad