

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

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.1992/Del/2019

निर्धारणवर्ष/Assessment Year: 2013-14

<b>Air Force Navy Farm Owners Welfare Association, C-2/52, Sector-31, Noida, Uttar Pradesh.</b>	<u>बनाम</u> Vs.	<b>ITO Ward 1(1) Noida.</b>
<b>PAN No. AAAJA0972B</b>		
अपीलार्थी <b>Appellant</b>		प्रत्यर्थी/ <b>Respondent</b>

निर्धारितकीओरसे / <b>Assessee by</b>	<b>Shri Rajiv Saxena, Adv., Ms. Sumangla Saxena, Adv. &amp; Shri Shyam Sunder, Adv.</b>
राजस्वकीओरसे / <b>Revenue by</b>	<b>Shri Om Prakash, Sr. DR</b>

सुनवाईकीतारीख/ <b>Date of hearing:</b>	17.10.2022
उद्घोषणाकीतारीख/ <b>Pronouncement on</b>	11.01.2023

**आदेश /O R D E R**

This appeal is filed by the assessee against the order of Id. Commissioner of Income Tax (Appeals)-1, Noida dated 29.10.2018 for the assessment year 2013-14.

2. In this appeal the assessee agitated the order of Id. CIT(Appeals) in holding that the provisions of Section 167B are applicable to the assessee. Assessee also agitated against the action of the Assessing Officer in determining the status of the assessee as Association of Person (AOP) as against Artificial Juridical Person (AJP).

3. Briefly stated the facts that the assessee is a Society registered under the Societies Registration Act, 1860 filed its return of income on 20.07.2013 for the assessment year under consideration declaring total income of Rs.37,080/-. The return was processed under section 143(1) of the Act and subsequently the assessment was completed under section 143(3) of the Act on 29.01.2016 determining the income of the assessee at Rs.1,39,280/-. While completing the assessment the Assessing Officer determined the status of the assessee as AOP and the interest income was taxed at maximum marginal rate. The assessee preferred an appeal before the Id. CIT(Appeals) contending that assessee society is an Artificial Juridical Person (AJP) and is a mutual benefit society and the receipts are not taxable on principles of mutuality. Assessee also contended that it is a registered society under the Societies Registration Act, 1860 and, therefore, rate of tax provided in Section 167A are not applicable. It was also contended that the assessee was recognized as AJP by issue of PAN, accordingly, the assessee was all along filing return of income as AJP and, therefore, cannot be considered as AOP. However, the Id. CIT(Appeals) by order dated 13.06.2016 held that assessee is an AOP and is subsisting for benefit of the members. The matter reached before the Tribunal and the Tribunal in ITA No. 6141/2016 dated 12.04.2017 restored the issues to the file of the Assessing Officer with the following observations:

*“5. The Id. CIT(Appeals) held that the assessee is to be taxed as AOP because AJP is only to be deemed have an*

*existence only where does not covered in any other clauses of section 2(31). Before us the only limited point made by the Id. counsel Ms. Sumangala Saxena is that the Id. Assessing Officer while applying the maximum marginal rate after invoking provision of section 167B has failed to consider the fact that under the said provision itself, exception has been carved out for Societies Registration Act 1860. Thus, even if the assessee is to be charged of tax as AOP then also it cannot be taxed at maximum marginal rate. In support of he drew our attention to the copy of registered certificate issued by the Registrar of Societies placed at page 1 of the paper book. Thus, she submitted that the assessee should not be taxed as maximum marginal rate.*

*6. On the other hand Id. DR submitted that none of the authorities have examined this issue and therefore the matter should be set aside to the file of the Assessing Officer. After considering the rival submissions and also perusing the material placed on record we find that the assessee an Air Force, Navy Farm owner's welfare association has been registered under the Societies Registered Act 1860. Vide certificate dated 23.10.2000 this fact has been acknowledged by the Id. Assessing Officer also in the second para of the assessment order. The only dispute is that whether the assessee should be taxed @ maximum marginal rate applicable, AGP or not. The assessee has also claimed that status is of an artificial juridical person and not AOP. However the Learned CIT(Appeals) has rejected this contention and held that the assessee is an AOP. However we find that neither the Assessing Officer nor the Learned CIT(Appeals) have examined the aspect from the provisions of section 167B which provide exception for application of maximum marginal rate in the case of society which is registered in the Societies Registered Act 1860. Accordingly we are of the opinion that the only falls limited purposes the matter is set aside to the file of the Assessing Officer to examine the applicability of section 167B in the case of the assessee accordingly to decide the issue in accordance with the law."*

4. Upon restoring the matter to the file of the Assessing Officer made consequential assessment on 28.08.2017. The Assessing Officer once again brought to tax the interest income as was done while completing

the assessment under section 143(3) of the Act. However, the Assessing Officer applied the tax rates as applicable for the cooperative societies. The assessee once again filed appeal before the learned CIT(Appeals) contending that assessee is a mutual benefit society which was though accepted by the Assessing Officer in the assessment order passed under section 143(3) of the Act the status of the assessee was determined as AOP instead of AJP. Assessee also contended that the provisions of Section 167B are not applicable to a registered society. The Id. CIT(Appeals) by order dated 29.10.2018 held that the provisions of section 167B of the Act are applicable to the society and the income of the assessee is liable to be taxed at maximum marginal rate.

5. The Id. Counsel for the assessee before me contends that the assessee is a society registered under the Societies Registration Act, 1860 applied for PAN as an Artificial Juridical Person (AJP) and the PAN was allotted to the assessee as AJP. The assessee was all along filing returns in the status of AJP and attention was invited to paper book page no. 16 to 22 which are the copies of returns filed for the assessment years 2010-11 to 2013-14, wherein the assessee has shown its status as AJP. The Id. Counsel for the assessee submits that the Assessing Officer while completing the assessment in the first round as well as in the second round determined the status of the assessee as AOP instead of AJP. The Id. Counsel for the assessee also placing reliance on the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Children Education

Society in ITA No. 1078/2006 dated 18.03.2013 submits that once the assessee was issued PAN recognizing as AJP the Assessing Officer cannot assess the assessee as AOP.

6. Coming to the applicability of the provisions of Section 167B of the Act the Id. Counsel for the assessee placing reliance on the decisions of the Hyderabad Bench of the ITAT in the case of KMR Education Society vs. ACIT [68 SOT 163] submits that once the assessee is registered under the Societies Registration Act, 1860 the provisions of Section 167B are not attracted. Ld. Counsel also placed reliance on the decisions of the Visakhapatnam Bench of the Tribunal in the case of Vidyodaya Educational Society vs. DCIT in ITA No. 369/Vizag/2016 dated 26.04.2018 and M/s Anand Educational Society vs. ITO in ITA No.67/Vizag/2018 dated 05.09.2018 in support of the above contention.

7. On the other hand, the Id. Departmental Representative (“Ld. DR”) submits that the Tribunal has directed the Assessing Officer to examine the applicability of provisions of Section 167B of the Act and there is no direction to examine the status of the assessee i.e. whether assessee is an AOP or AJP. The Ld. DR strongly placed reliance on the orders of the Id. CIT(Appeals) in sustaining the action of the Assessing Officer in treating the assessee as AOP and also applying the provisions of Section 167B of the Act and bringing the interest income to tax at maximum marginal rate.

8. Heard rival submissions, perused the orders of the authorities below and the materials placed before me.

9. On reading of the directions of the Tribunal, it is very much clear that the Tribunal for limited purpose of examining the applicability of provisions of Section 167B the matter was set aside to Assessing Officer to decide the issue in accordance with law. Ld. CIT(A) held that the provisions of Section 167B are applicable to the Assessee.

10. The issue of whether the provisions of Section 167B of the Act are applicable to the assessee society which is registered under the Societies Registration Act, 1860 is concerned, I find that the issue has been decided by the Visakapatnam Tribunal in the case of M/s Anand Educational Society vs. ITO (supra), wherein the Tribunal following its earlier order in the case of Vidyodaya Educational Society vs. DCIT held that once the society is registered under the Societies Registration Act the applicability of maximum marginal rates u/s 167B of the Act would not arise. While holding so, the Tribunal observed as under:

*“5. We have heard both the parties and perused the material placed on record. Though the Ld.CIT(A) held that the maximum marginal rate is applicable in the case of the assessee, who is having exempt income as well as taxable income, but there is no such distinction provided under section 167B of the Act. This Tribunal in the case cited supra held that normal rates are applicable in the case of the Society registered under Societies Act. For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal in para No.10-11 which reads as under:*

10. The next submission of the assessee is taxing the income at maximum marginal rate. As per section 167B of the Act, in case of an assessee registered under Societies Act, the same is excluded for taxing the income at for maximum marginal rate. For ready reference we extract relevant part of Section 167B(1) of the Act which reads as under:

167B. (1) Where• the individual shares of the members of an association of persons or body of individuals (other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India) in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate :

Plain reading of section 167B of the Act indicates that the income of company or cooperative society or a society registered under Societies Act of 1860 are excluded from charging the tax at maximum marginal rate (MMR) and would be chargeable at normal rates. In the similar facts and circumstances, the coordinate bench of ITAT in ITA Nos.212 to 215/vizag/2014 in the case of Sri Lakshmigapathi Seva Samithi Vs. CIT dated 26.8.2016 held that in case of society, the application of maximum marginal rate does not arise. For ready reference, we reproduce the extract of relevant part of the order of the Tribunal in para No.13 which reads as under:

"13. As regards the applicability of maximum marginal rate of tax is concerned, the CIT was of the opinion that the A.O. ought to have applied maximum marginal rate of tax to the income of the society. But, the fact is that once the society is registered under the Societies Registration Act, the applicability of maximum marginal rate does not arise, it is because the societies are registered under the Societies Registration Act are prohibited from distribution of any surplus to its members. Once the distribution of profit to its members is prohibited, the question of determination of share of each individual member does not arise. Hence, the CIT was not correct in coming to the conclusion that the

*rate of tax applicable to the assessee is maximum marginal rate of tax without understanding the provisions."*

*11. The assessee is a society registered under Societies Act, 1860 as evidenced from the registration certificate. The facts are similar in this case, therefore, following the decision of coordinate bench and section 167B of the Act, we hold that the income of the assessee is to be taxed at normal rates but not at maximum marginal rate, accordingly, we set aside the order of the Ld. CIT(A) and allow the appeal of the assessee on this ground.*

*6. During the appeal hearing, the Ld. DR did not bring any other decision of the higher court to controvert the case laws relied upon by the Ld.AR. Since, the facts are identical, respectfully following the rule of consistency and the view taken by this Tribunal in the case cited supra, we hold that the income of the assessee is to be taxed at normal rates, but not at maximum marginal rates. Accordingly, we set aside the order of the Ld.CIT(A) and allow the appeal of the assessee."*

Similar view has been taken by the Hyderabad Bench of ITAT in the case of KMR Educational Society vs. ACIT [68 SOT 163].

11. Facts being identical following the above decisions. I hold that the provisions of section 167B have no application to the Assessee and the income of the assessee cannot be taxed at maximum marginal rates. Ground nos. 1.a, 1.c to 1.e are allowed.

12. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 11/01/2023

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Dated: 11.01.2023

\*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard  
file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**