

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.20/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2016-17)

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| Bhattad Augustine Co-operative Housing Society Limited. 101 Bhattad Augustine CHS Ltd. Ayyappa Temple Road, Bangur Nagar, Goregaon (W), Mumbai-4000104. | बनाम/ Vs. | CPC, Bangalore Post Bag No. 2, Electronic City Post Office, Bangalore-650500. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACAB9945L | | |
| (अपीलार्थी / Appellant) | .. | (प्रत्यर्थी / Respondent) |
| Assessee by: | None | |
| Revenue by: | Shri Anil Gupta | |

सुनवाई की तारीख / Date of Hearing: 28/02/2023
घोषणा की तारीख /Date of Pronouncement: 31/03/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 09.11.2022 for AY. 2016-17.

2. The grounds of appeal of the assessee reads as under: -

“1. The Ld. CIT(A) erred in confirming the total income determined by the CPC, Bangalore pursuant to processing of return u/s 143(1) of the Act.

1.i. In doing so, the Ld. CIT(A) did not appreciate that the appellant is a cooperative housing society and while filing the return of income for the above year the appellant has erroneously declared the surplus left out of the contributions received from the members towards maintenance charges, ‘sinking fund, property tax, etc. as income, though the same based on the principle of mutuality is not income under the



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provisions of the Act, and further erroneously claimed the said income as deduction u/s 80P of the Act and that the CPC, Bangalore in absence of proper facts has determined the said surplus as the total income while processing the return u/s 143(1) of the Act.

1.ii. Further in doing so, the Ld. CIT(A) erred in holding that audited financial statements were not filed which averment is contrary to the material available on record.

1.iii. The Ld. CIT(A) further did not appreciate that if a particular income is not taxable under the Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine and that if an assessee, under a mistake, misconception or on not being properly instructed, is over assessed, the authorities under the Act are required to assist him and ensure that only due legitimate taxes are collected and that acquiescence cannot take away from a party the relief he is entitled to where the tax is levied or collected without authority of law.”

3. Brief facts are that the assessee is a Co-operative Housing Society and while filing the return of income for AY. 2016-17 it has mistakenly declared as income the surplus contribution received from the members to the tune of Rs.2,04,272/- which was processed by the CPC u/s 143(1) of the Income Tax Act, 1961 (hereinafter “the Act”) wherein the CPC disallowed the exemption which resulted in a demand of tax to the tune of Rs.60,029/-. Aggrieved, the assessee filed rectification application which did not find any response. Therefore, it preferred an appeal before the Ld. CIT(A) wherein the assessee claimed deduction u/s 80P of the Act on the basis of mutuality concept the excess contribution of members after expenditure. And claimed



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that the excess amount shown are not taxable. However, the Ld. CIT(A) has rejected the claim by observing as under: -

“4. The submissions made by the appellant have been given careful consideration. The main contention of the appellant is that it is a cooperative housing society and during the F.Y.2015-16 total contribution from the members was received at Rs.8,03,510/- inclusive of bank interest earned amounting to Rs.5,566/-. During the year the appellant society incurred Rs.4,87,804/- for operational expenses and Rs.1,17,000/- was transferred to “Sinking Fund Account”. Thus there was excess of income over expenditure at Rs.2,04,272/- which was the surplus contribution from its members. It has been claimed that excess amount of Rs.2,04,272/- is not its income but the contribution of its members and the same is exempt on the concept of principle of mutuality.

4.1 In its reply dated 02.09.2022, the appellant society has stated that audited annual report is attached for F.Y. 2015-16 but no such report has been filed. No documentary evidence has been filed during the appellate proceedings to establish that the appellant society had received contribution from its members at Rs.8,03,510/-. Hence, the claim of the appellant that surplus of Rs.1,98,706/-(Rs.2,04,272/- bank interest Rs.5,566/-) is exempt on the principle of mutuality. The action of the assessing officer in not allowing exemption of Rs.2,04,272/- claimed under Chapter VIA of the I.T. Act is held to be justified and is confirmed. Accordingly, the ground raised by the appellant is dismissed.”

4. Aggrieved, the assessee is before this Tribunal.



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5. Having heard the Ld. DR and after perusal of the records, it is noted that the Ld. CIT(A) has dismissed the appeal of the assessee on the ground (i) that the assessee claimed to have filed its audited annual report for FY. 2015-16, but it has not been filed before him. (ii) no documentary evidences have been filed before him (the First Appellate Authority) to establish that the assessee society has received contribution from its members to the tune of Rs.8,03,510/-. Hence according to the Ld. CIT(A), the assessee's claim that surplus of Rs.1,98,706/- (Rs.2,04,272/- - Rs.5,566/-) is exempt on the principle of mutuality could not be decided by him in the absence of supporting documentary evidences to prove that the assessee had received contribution from its members. However, from the grounds of appeal raised by the assessee society its discerned that audited financial statements were filed before the First Appellate Authority. Be that as it may, the impugned order of the Ld. CIT(A)/NFAC is set aside and the matter is restored back to the file of the Ld. CIT(A), with a direction to adjudicate the grounds raised by the assessee that the taxable income of the assessee society was only to the tune of Rs.5,566/- and the surplus of Rs.1,98,706/- was exempt on the principle of mutuality. Since the Ld. CIT(A) has confirmed the action of the AO/CPC only because of absence of audited annual report and documents to establish that the assessee has received contribution from its members of Rs.8,03,510/-, he has confirmed the action of the AO. Therefore, the assessee society is directed to file (up-load) the documents as found deficient by Ld. CIT(A), so that he can decide the claim raised by the



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assessee. With the aforesaid observation, the appeal 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 this 31/03/2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/03/2023.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai