

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F ": NEW DELHI
BEFORE
SHRI C. M. Garg, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, Accountant Member**

ITA No. 1312 and 1313/Del/2019
(Assessment Year: 2013-14 & 2014-15)

Park Place Condomonium Association, DLF City, Phased-V, Gurgaon, Haryana (Appellant) PAN: AACAP0318B	Vs. ITO, Ward-3(2), Gurgaon (Respondent)
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ITA No. 1413 and 1412/Del/2019
(Assessment Year: 2013-14 & 2014-15)

DCIT, Circle-3, Gurgaon (Appellant) PAN: AACAP0318B	Vs. Park Place Condomonium Association, DLF City, Phased-V, Gurgaon, Haryana (Respondent)
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Assessee by :	Shri Ved Jain, Adv Ms. Supriya Mehta, CA
Revenue by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing	04/09/2023
Date of pronouncement	11/09/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeals in ITA No. 1312 & 1313/Del/2019 for AY 2013-14 and 2014-15, arise out of the order of the Commissioner of Income Tax (Appeals)-1, Gurgaon [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 84/16-17 dated 31.12.2018 and 272/16-17 and 2014-15 dated 18.12.2018 against the order of

assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 17.03.2016 and 30.11.2016 by the Assessing Officer, Income Tax Officer, Ward-3(2), Gurgaon, (hereinafter referred to as 'ld. AO').

2. The assessee has raised the following grounds of appeal for AY 2013-14:-

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on the facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in enhancing the income of the assessee by Rs. 29,26,045/- without following due procedure as prescribed under the law.

3. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in enhancing the income of the assessee by setting up a new source of income which is beyond the power of the Ld. CIT(A) and his jurisdiction also.

4. (1) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in making addition of an amount of Rs. 29,26,042/- on account of maintenance charges received from corporate members. (ii) That the above-said addition has been made despite the fact that the said amount received by the assessee is exempt as per the principle of mutuality.

(ii) That the said addition has been made disregarding the judgment of the various high

Courts, whereby the same was held to be exempt on the principle of mutuality by the Court.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the maintenance charges received by the assessee is exempt from tax on the principal of mutuality even if the payers have deducted TDS on such payments

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that merely the TDS have been deducted on the payment received by the assessee, the same cannot be automatically chargeable to Income Tax.

7. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in not allowing the expenses of Rs.

13,86,081/- incurred by the assessee for earning the above alleged income."

3. The assessee has raised the following grounds of appeal for AY 2014-15:-

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on the facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in enhancing the income of the assessee by Rs.7,47,844 without following due procedure as prescribed under the law.

3. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in enhancing the income of the assessee by setting up a new source of income which is beyond the power of the Ld. CIT(A) and his jurisdiction also.

4. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in making addition of an amount of Rs.7,47,844/-on account of maintenance charges received from corporate members.

(ii) That the above-said addition has been made despite the fact that the said amount received by the assessee is exempt as per the principle of mutuality.

(iii) That the said addition has been made disregarding the judgment of the various high Courts, whereby the same was held to be exempt on the principle of mutuality by the Court.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the maintenance charges received by the assessee is exempt from tax on the principal of mutuality even if the payers have deducted TDS on such payments.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that merely the TDS have been deducted on the payment received by the assessee, the same cannot be automatically chargeable to Income Tax."

4. Identical issues are involved in these appeals hence, they are taken up together and disposed of by this common order for the sake of convenience.

5. The first identical issue is with regard to allowability of interest paid on Interest Bearing Maintenance Security deposit to the members u/s 57(iii) of the Act against the interest income received from bank. The inter connected issue thereon is the enhancement made by the Id CIT(A) by bringing to tax surplus derived by the resident welfare association and further disallowance of depreciation and income tax totaling to Rs. 13,86,081/-. The cumulative addition in this regard works out to Rs. 29,26,045/-.

6. We have heard the rival submissions and perused the material available on record. With the consent of both the parties, the appeal of the Assessee and for revenue for AY 2013-14 is taken as lead case and the decision rendered thereon shall apply with equal force for AY 2014-15 in view of the identical facts except variance in figures.

7. The income tax return for AY 2013-14 was filed by the Assessee, resident welfare association on 24.09.2013 declaring total income of Rs. 22,11,000/-. The Assessee had received interest income of Rs. 2,55,76,470/- on deposits placed with bank. This interest income would be liable to be taxed separately as income from other sources in view of the decision of the Hon'ble Supreme Court in the case of Bangalore Club Vs. CIT reported in 350 ITR 509.

8. It is not in dispute that the Assessee is a resident welfare association registered as AOP Group Housing Society consisting of 1282 members at Gurgaon. The Assessee society has received interest bearing maintenance security deposit from its members amounting to Rs. 29,78,05,452/-, which was utilized by placing fixed deposit with bank. The Assessee paid interest on this interest bearing maintenance security deposits to its members. The Assessee pleaded before the AO that this interest payment made to members would be squarely allowable as deduction u/s 57(iii) of the Act against the interest income received from

bank. The Id AO however did not heed to this contention of the Assessee and held that this interest income received from bank would be taxed on gross basis under the head income from other sources without following the reliance placed by the assessee on the coordinate bench decision of the Delhi Tribunal in the case of *Belaire Condominium Association Vs. ITO* in ITA No. 655/Del/2018 dated 25.04.2018. The case was remanded by the Id CIT(A) to the file of AO just to make enquiry as to whether the interest bearing maintenance security deposits received from members were utilized by the Assessee society to make investment in FDs and whether interest was actually paid to the members of the Assessee. The Id AO submitted his report on 01.11.2018. In the said report, the Id AO confirmed the fact that members of the association were indeed paid interest by the Assessee society and the same were also duly subjected to deduction of tax at source by the Assessee u/s 194A of the Act. It was also confirmed that the said interest income had been duly credited in the account of the members. The Id AO however, observed that there is no documentary evidence which will conclusively prove that maintenance of security deposits received from the members were interest bearing. The Assessee filed its rejoinder to the said remand report. The Id CIT(A) by following the decision of the Delhi Tribunal referred (supra) granted deduction towards interest payment made to the members u/s 57(iii) of the Act. Aggrieved by this action the revenue is in appeal before us.

9. Further, the Id CIT(A) observed that Assessee has received amount of Rs. 1,84,35,489/- from corporate members towards maintenance charges to the association and these corporate members had deducted tax at source while making payment of maintenance charges to the Assessee association. Since TDS was done by the corporate members, the Id CIT(A) concluded that the said receipt would not be covered by the principle of mutuality. Accordingly, the Id CIT(A) sought to bring to tax the surplus arising out of such maintenance charges amounting to Rs. 15,39,964/- as

an enhancement to the total income of the Assessee. Further, the Id CIT(A) also observed that in the total expenditure claimed by the Assessee on account of fixed expenses and variable expenses, a sum of Rs. 10,93,039/- was included on account of depreciation and sum of Rs. 2,93,042/- was included on account of income tax thereon. The Id CIT(A) observed that these expenses are also not allowable as deduction while taxing the surplus. Accordingly, he made disallowance of depreciation and income tax totaling to Rs. 13,86,081/- and added the same to the surplus already sought to be taxed in the sum of Rs. 15,39,964/- as stated (supra). Accordingly, the Id CIT(A) made an enhancement to the total income to the tune of Rs. 29,26,045/-. Aggrieved the Assessee is in appeal before us.

10. At the outset, we find that the Assessee had provided enough evidences to prove that interest bearing maintenance security deposits received from the members were utilized for making investments in fixed deposit with banks. The Assessee has paid interest to its members as name suggests i.e. interest bearing deposits. Since, there is a direct nexus between the amounts borrowed from the members in the form of interest bearing security deposits with the amount invested as fixed deposits with banks, the Assessee would be squarely eligible for deduction of interest paid to its members as deduction u/s 57(iii) of the Act. There is no quarrel that interest income received from banks, being a third party, would be liable to be taxed as income from other sources, in view of the decision of the Hon'ble Supreme Court in the case of Bangalore Club Vs. ACIT reported in 350 ITR 509. Since direct nexus is clearly found in the instant case therefore, the Assessee would be entitled for deduction of its interest payment made to its members u/s 57(iii) of the Act against the interest income received from banks. It is also not in dispute that the payment of interest made by the Assessee to its members were duly subjected to deduction of tax at source and the said interest is also credited to the

account of the said members. Hence, we do not find any infirmity in the action of the Id CIT(A) in this regard. Accordingly, ground raised by the revenue is dismissed for both the years.

11. With regard to Assessee's appeal, we find that the corporate members of the Assessee's association, who own the flats in the Assessee resident housing society, are bound to pay maintenance charges to the Assessee association. Since, they are corporate members, as per the law, they are bound to deduct tax at source while making payment of the maintenance charges to the Assessee which have been duly done by the corporate members. Merely because the particular receipt received from the members has been subjected to deduction of tax at source by the payer, that would not make the receipt automatically taxable in the hands of the recipient. We hold that maintenance charges received from the corporate members would also be governed by the principle of mutuality. As long as money is not received from 3rd parties, the benefit of principle of mutuality cannot be denied to the Assessee society. Further, we find that the Hon'ble Supreme Court in the case of PILCOM Vs. CIT reported in 425 ITR 312 had categorically held that payer need not to bother about the fact as to whether income is chargeable to tax in the recipient's hand or not and hence, the payer is bound to deduct tax at source while making payment thereon. In the instant case, as stated (supra), the maintenance charges received by the Assessee association from its corporate members would be exempt from tax on the basis of principle of mutuality. Merely because the same had been subjected to deduction of tax at source by the payer, the receipt does not partake the character of the taxable receipt. The receipt of said maintenance charges from corporate members would be still exempt in the hands of the Assessee and the Assessee would be eligible to claim refund of TDS on filing the returns. Since, the entire maintenance charges is received from corporate members has been held to be exempt on principle of mutuality, no purpose would be served in

adjudicating the allowability of depreciation and income tax which was subject matter of enhancement by the Id CIT(A) together with the addition of surplus thereon. Accordingly, grounds raised by the Assessee are allowed for both the years.

12. In the result, both the appeals of the revenue are dismissed and the both the appeals of the Assessee are allowed.

Order pronounced in the open court on 11/09/2023.

-Sd/-
(C. M. Garg)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 11/09/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi