

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

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.802/Ahd/2023
Assessment Year: 2020-21**

Kalhar Co-op. Housing Society Limited, Part-2, 00, Kalhar Bungalow, Sector-2, Nandoli, TA. Kalol, Gandhinagar – 382 721. [PAN – AAAAK 6215 G] (Appellant)	Vs.	The Income Tax Officer, Ward – 1, Meahsana. (Respondent)
Assessee by	Shri S.N. Divatia, AR	
Revenue by	Shri Aaashish Rajesh Revar, Sr. DR	
Date of Hearing	24.01.2024	
Date of Pronouncement	31.01.2024	

ORDER

This appeal is filed by the assessee against order dated 14.08.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2020-21.

2. The assessee has raised the following grounds of appeal :-

- “1.1 *The order passed u/s.250 on 14.08.2023 for AY 2020-21 by NFAC, Delhi, (for short 'NFAC') upholding the disallowance of the claim of expenses aggregating to Rs.55,34,578/-and charging tax at maximum marginal rate on the assessed income is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2 *The Ld. NFAC has grievously erred in law and or on facts in not considering fully and properly the explanations furnished and the evidence produced by the appellant.*
- 2.1 *The Ld. NFAC has grievously erred in law and or on facts in upholding that total expenses of Rs.55,34,578/- were not admissible u/s.57(iii). The Id. NFAC has failed to appreciate that common expenses incurred out of the maintenance contribution collected from the members of the society (to meet with upkeepment and maintenance of the common amenities provided to the members)*

and the income derived from investment of such funds till their disbursement were deductible.

2.2 That in the facts and circumstances of the case as well as in law, the Ld. NFAC has failed to appreciate the modus operandi of funding the common expenses towards upkeepment and maintenance of the society.

3.1 The Id. AO has erred in charging tax on the assessed income at maximum marginal rate instead of the normal rate as applicable to individual. The NFAC has failed to deal with this ground.

3.2 The Id. NFAC ought to have appreciated that in view of the decision of Hon'ble Supreme Court in case of Secundrabad Club [CIVIL APPEAL NO(S).5195-5201 of 2012] the net interest income earned from investment of funds with outside third parties was chargeable to tax and that too at normal rate.

It is therefore prayed that the disallowance of expenses of Rs.55,34,578/- made by the AO should be deleted.”

3. The assessee is a Co-operative Housing Society duly registered under the Gujarat Co-operative Society Act, 1961 dated 03.02.1997. The assessee filed return of income on 12.10.2020 declaring total income at Rs.Nil. The return of income was processed under Section 143(1) of the Income Tax Act, 1961. The case was selected under the category of limited scrutiny, the reason being deductions from income from other sources and high creditors/liabilities. Accordingly, notice under Section 143(2) of the Act dated 29.06.2021 and 142(2) dated 29.10.2021 & 24.11.2021 alongwith Questionnaire was issued and served upon the assessee. Show cause notice under Section 143(3) of the Act was issued on 22.03.2022. In response to the said statutory notices, the assessee furnished the detailed submissions dated 13.07.2021, 03.12.2021, 04.12.2021 and 22.03.2022. The Assessing Officer observed that from the perusal of Schedule-OS 'income from other sources' the assessee has shown an amount of Rs.6,16,121/- as gross income thereby giving the bifurcation as well. Against the same income, the assessee claimed deduction of Rs.55,34,579/-. The Assessing Officer observed that the assessee has not clarified/gave explanation regarding expenses claimed under Section 57 of the Act for earning interest income from Banks, interest on income tax refund, miscellaneous income etc. and its related expenses. The Assessing Officer, therefore, held that the

since the expenses are not wholly and exclusively incurred for the purpose of making or earning any income which is chargeable under the head income from other sources, therefore, the same was disallowed under Section 57 of the Act amounting to Rs.6,14,440/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee's society is established to provide plots, common amenities such as street light, tube well, water pipelines, common garden, security services etc. Therefore, in order to maintain and upkeep the common amenities provided to its members, the maintenance contribution is collected and kept in deposit with Bank till the same is utilised. The assessee society, therefore, has fixed deposits with SBI which yield interest income and also utilised for common benefit. The Ld. AR submitted that perusal of the audited income and expenditure account as well as balance sheet for A.Y. 2020-21 shows the financial position on the aforesaid lines only. During the year under consideration, the assessee society earned interest on FDRs with Bank, GEB aggregating to Rs.6,16,121/- and collected maintenance contribution of Rs.48,57,915/- from its members. The assessee claimed expenses aggregating to Rs.55,34,578/- against the said interest income into the deficit of Rs.49,18,458/-. The Ld. AR submitted that from the computation of tax, the Assessing Officer charged tax at 30% instead of the progressive rate as per normal slab. Therefore, the demand raised by the Assessing Officer is also not justified. The Ld. AR further submitted that the common expenses incurred out of maintenance contribution collected from members of the society to meet with upkeepment and maintenance of the common amenities provided to the members and the income derived from investment of such fund till their disbursement has to be deductible. The Ld. AR relied upon the decision of Hon'ble Supreme Court in the case of Secunderabad Club (Civil Appeal Nos.5195-5201 of 2012) wherein it is held that the net interest income earned from investment of funds with outside third parties were chargeable to tax and that too at normal rate. The Ld. AR submitted that this practice was continuously

done by the assessee in the earlier assessment years i.e. 2018-19 & 2019-20 and the Revenue has allowed the same

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

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the expenses/expenditure by the assessee has a direct nexus with the amount/common fund collected by the members of the society and the same which was kept in the Bank as Fixed Deposit. From the perusal of records, it appears that the said deposits as well interest derived thereon is directly used for the maintenance and upkeepment of the society. Therefore, the assessee has rightly set off the same against the income of the assessee society. The Assessing Officer as well as the CIT(A) has not justified in disallowing the same. The decision of Hon'ble Supreme Court in case of Secunderabad Club (supra) is applicable in the present case. Thus, the appeal of the assessee is allowed.

8. In the result, appeal failed by the assessee is allowed.

Order pronounced in the open Court on this 31st January, 2024.

Sd/-

(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 31st January, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad