

IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4437/Mum/2023
(A.Y. 2016-17)**

Imely Co-operative Housing Society Ltd. 61-A, Rukiya Manzil, B Desai Road, Sophia Collage Lane, Mumbai-400026	Vs.	ITO, Ward 19(1)(5), Matru Mandir, Tardeo Road, Mumbai-400007
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AAAAI0956L		
Appellant	..	Respondent

Appellant by :	Shri. Jitendra Singh
Respondent by :	Shri. H. M. Bhatt

Date of Hearing	30.04.2024
Date of Pronouncement	30.04.2024

आदेश / O R D E R

PER RENU JAUHRI (A.M.) :-

1. The present appeal filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)-30, Mumbai / National Faceless Appeal Centre [hereinafter referred as “CIT(A)”] dated 13.10.2023 u/d 144 of the Income-tax Act, 1961 [hereinafter referred as “Act”] for A.Y. 2016-17 . The assessee has raised the following grounds before us:

“1. The Ld. National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the "Ld. CIT(A)") erred in passing the order dated 13.10.2023 under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") without appreciating the facts and circumstances of the case in proper perspective. Thus, the order passed by Ld. CIT(A) is against provisions of law and the same may be quashed

2 Order passed without providing the Appellant an appropriate opportunity of being heard is against the principals of natural justice

i. The Ld. CIT(A) erred in passing the impugned order dated 13.10.2023 under section 250 of the Act without providing the Appellant an appropriate opportunity of being heard. Hence, the impugned appellate order passed by Ld. CIT(A) is against the principals of natural justice and void-ab-initio. The Appellant, therefore, prays that impugned order passed by Ld. CIT(A) is bad in law and the same may be quashed and set aside.

3. Appellate order passed without dealing the issues raised is bad in law

i. The Ld. CIT(A) erred in passing the appellate order dated 13.10.2023 on technical grounds without dealing the issues raised in the appeal memo is bad in law. The Appellant, therefore, prays that the impugned order passed by Ld CIT(A) is against the settled provisions of judicial discipline. Hence, the same may be quashed and set aside.

4. Disallowing the exemption claimed towards the contribution received from the members of the society as non-genuine unjustified

Rs.73,37,993/-

i. The Ld. CIT(A) erred in upholding the action of the Ld. A.O. in disallowing the exemption claimed towards the contributions received from the members amounting to Rs.73.37,993/- as non-genuine and taxing the same without appreciating the facts and circumstances of the case. The Appellant, prays, that the addition of Rs. 73,37,993/- is unjustified and the same may be deleted

ii. The Ld. CIT(A) failed to appreciate that the contribution was received from members towards repairs and maintenance of the society premises and the same are supported by proper documentary evidences. The Appellant, therefore, prays the contribution received from the members of the society are exempt from tax on the principals of mutuality. Hence, the disallowance of exemption claimed amounting to Rs.73.37,993/- is unjustified and the same may be deleted

iii. The Ld. CIT(A) further failed to appreciate that the contribution received from the members of the society are identifiable and no outside contributions are received. Hence, the same are governed by principals of mutuality. The Appellant, therefore, prays that disallowance of exemption claimed amounting to Rs. 73,37,993/- and taxing the same is against the provisions of the Act and the same may be deleted.

5. Disallowance of deduction claimed under section 80P(2)(d) of the Act unjustified -Rs.1,66,143-

i. The Ld. CIT(A) erred in upholding the action of the Ld. A.O. in disallowing the deduction claimed under section 80P(2)(d) of the Act amounting to Rs. 1,66,143/- without appreciating that the Appellant satisfies all the condition precedent enumerated under section 80P(2)(d) of the Act to claim the deduction with respect to the interest income earned from the Co-Operative

Banks. Hence, disallowance of deduction amounting to Rs. 1,66,143/- claimed under section 801(2) (d) of the Act is unjustified and the same may be deleted.

ii. The Ld. CIT(A) failed to appreciate that the Appellant being a Co-Operative Society is eligible to claim the deduction under section 80P(2)(d) of the Act with respect to the interest earned on the investment made with the Co-operative Banks. Hence, denying the deduction amounting to Rs.1,66,143/- under section 80P(2)(d) of the Act is unjustified and the same may be deleted.

iii. The Ld. CIT (A) fell in error of law in declining the deduction of Rs.1,66,143/- claimed under section 80P(2)(d) of the Act on some erroneous and extraneous consideration without even confronting the Appellant with the same. Hence, the order passed by Ld. CIT(A) is merely on conjecture and surmises and against the principals of natural justice and the same may be quashed.”

2. In essence the appellant has challenged the exparte order passed by the Ld. CIT(A) confirming the action of the Assessing Officer who had also passed the assessment order u/s 144 of the Act.

3. Facts in brief are as under:

- a. The appellant is a co-operative housing society and filed its return of income on 17.10.2016 showing nil income.
- b. The return was processed u/s 143(1) of the Act and subsequently, the case was selected for scrutiny under CASS and notice u/s 143(2) was issued on 17.07.2017 by the AO.

- c. Subsequently, the case was transferred from ITO 24(3)(1), Mumbai to ITO 19(1)(5), Mumbai and notice u/s 142(1) of the Act along with questionnaire dated 15.11.2018 was issued online. Another notice u/s 142(1) of the Act was issued on 28.11.2018 and duly served on the assessee.
 - d. As no compliance was made to the notices, the assessment was completed exparte treating the entire receipt of ₹73,37,993/- as income of the assessee.
 - e. Being aggrieved by the order u/s 144 of the Act, the appellant filed appeal before NFAC on 01.03.2019.
 - f. Since, no proper compliance was made to the various notices given by the Ld. CIT(A), the appeal was dismissed vide order dated 13.10.2023.
4. The Ld. Authorized Representative of the assessee society has submitted before us that the manager of the society did not inform the appellant about notices sent by the AO, hence, no compliance could be made by the appellant. The earlier manager has been removed and a new manger has been appointed now. It was, therefore, requested that the matter may be set aside for fresh adjudication on merits.
5. The Departmental Representative [DR] has no objection to this proposal.

6. Accordingly, we restore the matter to the file of the AO with the direction to provide opportunity to the appellant and decide the case on merits.

7. In the result the appeal filed by the assessee is allowed.

Order Pronounced in Open Court on 30.04.2024

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Place: Mumbai

Date 30.04.2024

ANIKET SINGH RAJPUT/STENO

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 DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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