

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,**

**ITA No.4269/Mum/2023**

**(A.Y. 2016-17)**

|   |     |   |
|---|-----|---|
| IRLA Co-op HSG Society Limited, 191/A, Prime Mall Irla, Vile Parle (West) Mumbai – 400056 | Vs. | ITO, Ward 25(2)(5) Maharashtra – 400054 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAAI4878F   |     |   |
| Appellant   | ..  | Respondent                              |

|                 |               |
|-----------------|---------------|
| Appellant by :  | Pramod Parida |
| Respondent by : | H.M. Bhatt    |

|                       |            |
|-----------------------|------------|
| Date of Hearing       | 13.05.2024 |
| Date of Pronouncement | 21.06.2024 |

**आदेश / O R D E R**

**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the assessment order dated 23.11.2018 passed u/s 143(3) of the Income Tax Act, 1961 for the assessment year 2016-17. The assessee has raised the following grounds before us:

**“1. Disallowance u/s 43B- 61,01,040/-**

- i) *The Id. CIT(A) erred in confirming the disallowance of statutory liabilities without appreciating that the same had been paid before the due date of filing of Return u/s 139(1) and further erred in holding that the Appellant, a co-op housing society (CHS), is doing business activity, therefore, as Sec 438 is not applicable on the face it being eligible for the benefit u/s 80P, the disallowance of Rs.61.01.040/- is uncalled for and the same may be deleted*
- ii) *Without prejudice to above, the Id CIT(A) erred in holding that the concept of mutuality does not apply to the Appellant where there is close nexus of all its funds flow are utilized exclusively for the benefit of its members, hence the disallowance made may be deleted as consistency needs to be respected.*

**2. Taxability u/s. 22 or u/s. 56- Rental or hire charges Rs.8,73,634/-**

*The Id. CIT(A) erred in confirming the rental and/or hire charges receipts be taxable u/s 56 instead of Sec 22 as correctly declared by the Appellant, therefore, on the failure of equity, taxing of Rs.8.73,634/- u/s 56 is not justified and the Appellant's declarations may be accepted*

**3. Levy of Penal Interests**

*The Appellant, on merits, denies its liability to penal interest.*

4. *The Appellant craves leave to add, amend or alter all or any of the above Ground of Appeal.”*

2. Fact in brief is that assessee is a cooperative housing society and return of income declaring total income of Rs.9,19,650/- was filed on 22.10.2016. The case was selected for limited scrutiny and notice u/s 143(2) of the Act was issued on 29.07.2017. During the course of assessment the assessing officer on perusal of the submission of the assessee noticed that assessee has given space on rent and the rental income has been treated as house property income and claimed deduction u/s 24(b) of the Act. However, on perusal of the rental agreement the assessing officer found that Mr. Sufiyan Khan from whom assessee has shown rental income was the proprietor of M/s Ad-Line and carrying on business of advertisement and he had approached the assessee's society for putting up 'Glass Facad Board' on the entrance of the building known as 'Prime Mall' which was a part of the assessee society. After considering contents of the agreement the assessing officer was of the view that the premises rented out by the assessee to the aforesaid tenant was used to put up advertisement hoarding. Therefore, income of the assessee society for giving space of rent is to be assessed as income from other sources and no income from house property. Since, the income for providing space on rent was assessed as income from other sources, therefore, the deduction u/s 24(b) of the Act amounting to Rs.1,59,467/- claimed was disallowed.

3. Further on verification of form no. 26AS the assessing officer noticed that assessee has received rental income of Rs.10,75,000/- however, it had shown such income to the amount of Rs.7,37,808/-

only, therefore, the balance amount of Rs.3,37,292/- was added to the income from other sources of the assessee society.

4. During the course of assessment the AO has also noticed that as per the audit report an amount of Rs.61,01,040/- was included in the current liability as statutory dues payable by the assessee in the balance sheet as on 31.03.2016. The assessee explained that provision of Sec. 43B was not attracted on account of concept of mutuality, however, the assessing officer had not agreed with submission of the assessee and disallowed the amount of Rs.61,01,040/- u/s 43B of the Act.

5. The assessee has filed appeal before the ld. CIT(A). However, the assessee has not made any compliance to the notices of hearing issued by the ld. CIT(A), therefore, the ld. CIT(A) has dismissed the appeal of the assessee and additions made in the assessment order were sustained.

6. During the course of appellate proceedings before us the ld. Counsel submitted that necessary compliance could not be made before the ld. CIT(A) since the earlier counsel of the assessee has not made compliance to the notices issued by the ld. CIT(A). In this regard the new tax counsel of the assessee Shri Pramod Kumar Parida has filed letter dated 13.05.2024 stating that due to serious illness (Alzheimer disease), the earlier counsel of the assessee Shri K.V.G. Aithal could not respond in time because of illness. Therefore, the ld. Counsel submitted that more opportunity be provided to the assessee for making submission before the ld. CIT(A) for deciding the case of the assessee on merit.

7. On the other hand, the ld. D.R supported the order of the lower authorities.

8. Heard both the sides and perused the material on record. Without reiterating the facts as discussed above it is undisputed fact that assessee could not make compliance to the notices of hearing issued by the ld. CIT(A), therefore, the ld. CIT(A) has sustained the addition as per the assessment order. During the course of appellate proceedings before us the assessee has also filed paper book comprising details of submission and copies of document from pages no. 1 to 185 also filed before the assessing officer i.e audited accounts of the assessee, Leave & License Agreement, copy of bank statement, detail of TDS payment, service tax payment detail, property tax detail, copy of society bye laws etc. Considering the above fact and circumstances it appears that there is bonafide reason due to which the necessary required compliance could not be made before the ld. CIT(A) by the assessee because of illness of the earlier counsel, therefore we consider it appropriate to provide more opportunity of hearing to the assessee at the level of first appellate authority for deciding the case on merit. Therefore, we restore this appeal of the assessee to the file of the ld. CIT(A) for deciding afresh on merit after considering the submission of the assessee as contemplate u/s 250(6) of the Income Tax Act. Needless to say that necessary opportunity of hearing to provided to the assessee. Therefore, the appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21.06.2024

Sd/-

(Rahul Chaudhary)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 21.06.2024

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

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

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