

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 1115/Mum/2024 (A.Y. 2013-14)

Atlanta Premises Cooperative Society Ltd. 72, Atlanta, 209 Nariman Point Mumbai-400 021.  PAN : AAAAA4483C	Vs.	The Assistant Commissioner Of Income Tax 17(1)(1) Kautilya Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051.
(Appellant)		(Respondent)

Assessee by	Shri Vimal Punmiya
Department by	Shri R.R. Makwana
Date of Hearing	10.06.2024
Date of Pronouncement	27.06.2024

ORDER

Per Prashant Maharishi, Accountant Member

1. This appeal is filed by the assessee/appellant for assessment year 2013 - 14 against appellate order passed by the Commissioner of income tax (appeals) - 1, Noida (the learned CIT - A) dated 23/2/2024 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) of the income tax act, 1961 (the act) dated 9/3/2016 was dismissed for non-compliance of six notices issued by the learned CIT - A. The assessee is in appeal before us.
2. The grievance of the assessee is the learned assessing officer has made an addition of ₹ 26,848/- being interest on deposit received from the BEST on its deposit for electricity services which has been adjusted by the assessee against the amount of outgoing to the service provider and further in addition of ₹ 343,793/- received from interest on bank

- appearing in the form number 26 AS which is received on behalf of the members and same is credited to the members account and not the income of the assessee has been added by the AO.
3. Fact shows that the assessee has filed return of income on 26/9/2013 declaring a loss (as stated by the assessing officer but in fact it is a positive income) of ₹ 2,732,920/- the return was picked up for scrutiny and necessary notices under section 143 (2) was issued on 5/9/2014. The AO noted that the assessee is a cooperative was in society which has earned interest income and contribution from the learned assessing officer noted that assessee has claimed deduction under section 80 P (2) ©(ii) of the act of ₹ 50,000/- the learned assessing officer disallowed the same stating that this is a deduction in case of profits and gains of the business as assessee has on only rental income and interest income assessee is not eligible for the same. As per the electronic data available in form number 26 As it was found that the assessee has received an interest of ₹ 26,848 on interest income on deposit with BEST, the assessee has not offered the same income and accordingly the addition of ₹ 26,848/- was made. The assessee has also received interest income from Indusind bank as appearing in form number 26AS of ₹ 343,793/- on which tax is deducted. It was found that assessee has not offered the same and therefore same was added to the total income of the assessee. Consequently the assessment order under section 143 (3) of the act was passed on 9/3/2016 determining total income at ₹ 3,153,620 against the returned income of ₹ 2,732,920/-.
  4. The assessee preferred appeal before the learned CIT - A wherein the assessee has been issued six notices however none of them replied and therefore the learned CIT - A dismissed the appeal of the assessee for

- non-prosecution. He confirmed the order of the learned AO is nothing was submitted before him against the finding of the learned AO.
5. Assessee in appeal before us, has stated that the amount of interest received from Bombay electricity Co was on deposit with that company, the interest income has been adjusted from the electricity expenditure incurred on net of the electricity expenditure claimed. Therefore the income is already offered. With respect to the income received from Indusind Bank it was submitted that such interest is received on account of members and credited to the members account. Therefore this income belongs to the member and not to the society. Assessee also claim that deduction of ₹ 50,000 should be allowable to the assessee.
  6. The learned authorised representative submitted a detailed paper book and the written submission made before us. He also submitted the copy of the bills of the service provider of electricity as well as the copy of the auditors report and financial statements. And therefore submitted that the addition made by the learned assessing officer are incorrect.
  7. The learned departmental representative vehemently submitted that assessee has not submitted anything before the learned CIT - A and raising all these pleas before tribunal. Therefore the issue should be set-aside to the file of the learned CIT - A for fresh adjudication.
  8. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that assessee is a co-operative society, on interest income from cooperative bank and rental income. It claimed deduction of ₹ 50,000 under section 80 P (2) (C) of the act. The learned assessing officer disallowed the same holding that assessee has only income from rental and interest and therefore such deduction is only allowable against business income. Further assessee has also

stated that amount of ₹ 26,848 on which tax is deducted of ₹ 2685/- was already adjusted against the electricity bills of the assessee for the month of March 2013. With respect to the interest income earned from bank on which tax is deducted, assessee has stated that this deposit belongs to the member and also interest belongs to the member. Therefore same is not taxable in the hands of the assessee. However we find that these pleas are not considered by the learned assessing officer. Further, the assessee remained unresponsive before the CIT - A therefore in the interest of the Justice, we restore the issue back to the file of the learned assessing officer wherein all these pleas can be raised and it is shown that the income offered by the assessee also included these income and assessee is entitled to necessary deduction, assessee is directed to submit the details before the learned AO, who may consider the explanation of the assessee and thereafter giving an opportunity of hearing to the assessee may decide the issue afresh. Accordingly the grounds of appeal raised by the assessee are allowed to the above extent.

9. In the result appeal of the assessee is allowed for statistical purposes.  
Order pronounced in the open court on 27 June, 2024.

Sd/-  
(Prashant Maharishi)  
Accountant Member

Mumbai : 27.06.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

BY ORDER,

