THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Ramit Kochar, Accountant Member

ITA No. 177/Ahd/2023
Assessment Year 2017-18

Sohamnagar Co-Operative Housing Society Ltd., Vibhag II, Goyal Park Appartment, Vastrapur, Ahmedabad-380015 Gujarat, PAN: AADAS9025K (Appellant)	v.	The Income Tax Officer, Ward-3(3)(6), Ahmedabad, Gujarat (Respondent)

Assessee by: Shri Mohit Balani, A.R.
Revenue by: Smt. Trupti Patel, Sr. D.R.

Date of hearing : 04-07-2024
Date of pronouncement : 30-07-2024

आदेश/ORDER

This appeal in ITA No. 177/Ahd/2023 for assessment year 2017-18 is filed by the assessee before Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad , which has arisen from the appellate order dated 17-01-2023 in DIN & Order No. ITBA/NFAC/S/250/2022-23/1048850676(1)

passed by ld. Commissioner of Income-tax(Appeals),NFAC, New Delhi u/s 250 of the Income-tax Act, 1961, which in turn has arisen from the assessment order dated 06-12-2019 passed by learned Assessing Officer u/s. 143(3) of the Income-tax Act, 1961(Order No. ITBA/AST/S/143(3)/2019-20/1021837174(1)).

2. The grounds of appeal raised by the assessee in Memo of Appeal filed with the ITAT, Ahmedabad Bench, Ahmedabad, reads as under:-

> *"1 The learned CIT(A) has erred in law and on the facts of the case in confirming the action of learned AO in making an addition of Rs. 14,60,191/- in relation to the expenses claimed by the Appellant against the income that it earned u/s 57 of the Act.*
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> *2 Alternatively and without prejudice to the above, expenses may kindly be allowed u/s 37 of the Act.*
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> *3 Learned CIT(A) has erred in law and on the facts of the case in confirming the action of learned AO in not appreciating various evidences and submissions placed on record.*
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> *4 Learned CIT(A) has erred in law and on the facts of the case in charging interest u/s 234/B/C/D of the Act.*
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> *5 Your appellant craves liberty to add, to alter, to modify, to amend or to withdraw / delete any of the grounds of appeal at any time, on or before the hearing of appeal."*

3. The brief facts of the case are that the assessee filed its return of income on 20.03.2018, declaring total income of Rs.

23,520/-. The return of the income was processed by Revenue u/s. 143(1) of the 1961 Act. The case of the assessee was selected for framing limited scrutiny assessment under CASS. Statutory notices u/s. 143(2) and u/s. 142(1) were issued by the AO to the assessee, which were claimed by the AO to have been duly served on the assessee. During the course of assessment proceedings, the assessee filed submissions before the A.O. It was observed by the A.O. that the assessee is Co-operative Housing Society. The assessee's main activity is to collect maintenances charges from all the members and spend the said amounts for meeting the common expenses of society maintenances like staff salary, security expenses, electricity bill, electricity expenses, repair and maintenance, audit fee, printing and stationery, telephone expenses, bank charges, garden maintenance expenses, festival expenses , account charges, computer annual maintenance, labour and colour expenses , depreciation. The AO observed that during the year under consideration, the assessee has not carried out any business activity. The assessee's only source of income is interest income on FDR. The A.O. observed that the assessee has received the FD interest income of Rs. 3,82,193/- , and the assessee has also received rent income of Rs.10,62,390/- , Interest from Member of Rs.3,580/-, Saving Interest of Rs. 4,727/- and Torrent Interest income of Rs.7,301/-. The A.O. observed that the interest income on FDRs was in the nature

of income from other sources, and the assessee has shown the said income in the computation of income filed with return of income. The A.O. also observed that the assessee has claimed deduction/expenses of Rs.27,34,560/- u/s. 57 of the Act. The Interest income earned by the assessee has been shown under the head 'income from Other Sources' u/s. 56, and as per Section 57 of the 1961 Act, deduction of only those expenses were allowable which are directly linked to the earning of the said income. The A.O. observed that in the case of the assessee no expenditure was expended wholly and exclusively for the purpose of earning such income and therefore these expenses are not allowable against the said interest income.

3.2. The A.O. issued show cause notice to the assessee why the interest income of Rs. 14,60,191/- earned from FD, rent income, interest from member, Saving Interest and Torrent interest income should not be treated as income from other sources and should not be brought to tax, without allowing any expenditure, since no expenditure claimed was incurred wholly and exclusively for earning the interest income. The assessee submitted that the similar issue arose in assessment year 2013-14 , and Ld. CIT(A) has fully allowed the appeal and entire addition made by the A.O. was deleted by ld. CIT(A). The AO also observed that Hon'ble CIT(A)-3, Ahmedabad has decided appeal in the favour of department on similar issue in

the case of Parisar Co-operative Housing Society Limited. The A.O. observed that the interest income earned by assessee on FDR with Nationalized Bank and saving bank interest are also not covered with mutuality, as these are accretion to the surplus fund or maintenance deposit parked with banks. The said interest is generated on the investment of such funds is not an income which is received from the Members of the assessee but from third parties such as the banks with whom the funds are invested. Thus, these income do not fulfill the condition of mutuality , and hence interest income earned by the assessee from the banks will not fall within the ambit of the mutuality principles and would therefore , be chargeable to tax in the hands of the assessee. The A.O. also relied upon decision of Hon'ble Supreme Court in the case of *Bangalore Club v.. CIT (2013) 29 taxmann.com 29 (SC).* The AO observed that the assessee has itself shown interest income of Rs. 14,60,191/- as interest income by way of income from other sources u/s 56 of the 1961 Act and claimed deduction u/s 57 of the 1961 Act in respect of maintenance expenses, so there is no dispute regarding the principles of mutuality. The A.O. also observed that the assessee could not demonstrate that the maintenance and other expenses to the extent of Rs. 27,34,670/- are incurred for the purposes of earning interest income on bank deposit as per provision of Section 57 of the 1961 Act. The AO observed that as per provisions of Section

57(iii) of the 1961 Act, any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income is deductible for computing the income under the head income from other sources. The AO observed that in the instant case , this condition is not satisfied or proved how the maintenance expenses incurred is for the purposes of earning interest income. The AO held that interest income earned by the assessee from nationalized bank will fall under the purview of Section 56 of the 1961 Act , and thus the maintenance expenditure incurred by the assessee for the purposes of computation of income under the head of income from other sources is not deductible from interest income on bank deposits as these expenditure had no role in earning the aforesaid interest income from FDR and rent income. Thus, the A.O. disallowed the expenses claimed u/s. 57 of the Act by the assessee to the extent of Rs. 14,60,191/- which stood added by the AO to the total income of the assessee.

4. Aggrieved, the assessee filed first appeal with ld. CIT(A), who dismissed the appeal of the assessee by holding as under:

> *6.5. I have carefully considered the submissions of the appellant and also the copy of the appellate order passed by the CIT Appeals in the appellant's own case for the earlier year. At the outset, it is to be stated here that each*

assessment year is separate by itself and the full facts have to be analyzed before reaching conclusions. The statute provides that against the income chargeable under head 'Income from other sources' the deduction on account of expenditure, not being in the nature of capital expenditure, laid out or expended wholly or exclusively for the purpose of making or earning such income is deductible. In other words, the assessee has to establish its claim of expenditure within parameters "laid out or expended wholly and exclusively for the purpose of making or earning such income". It is well settled that the assessee must have incurred expenditure for the purpose of earning income from other sources; this is the condition precedent for allowing deduction under section 57 (iii) of the Act. In other words, it is incumbent upon the assessee claiming the said expenditure to establish nexus between the expenditure and income and in the absence of the same, the assessee is not entitled to the claim of expenditure under section 57(iii) of the Act. For determining the applicability of section 57(iii) of the Act what has to be seen is the purpose of expenditure and the purpose must be for earning the income. The link is between expenditure incurred and income earned. To be eligible for deduction under section 57(iii) of the Act, expenditure incurred should be linked to earning of income.

6.6. The Hon'ble Supreme Court in CIT v. Rajendra Prasad Moody [1978] 115 ITR 519 had observed as under:-

"What section 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of

the expenditure that is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income.

6.7. In a recent case reported in [2018] 90 taxmann.com 422 (Pune Trib.), IN THE ITAT PUNE BENCH 'B' in the case of Poona Club Ltd. v. Assistant Commissioner of Income-tax, Circle-4, Pune, In IT APPEAL NOS. 1068 & 1069 (PUNE) OF 2014 FOR [ASSESSMENT YEARS 2008-09 AND 2009-10), DATED JANUARY 23, 2018, the issue considered was:

"IT: Where assessee-club received membership fee from various members which were kept in FDRs and interest earned thereon was brought to tax under section 56, in view of fact that assessee failed to establish nexus between expenditure incurred under various heads and earning of said interest income, its claim for deduction under section 57(iii) was to be rejected". The Hon'ble ITAT has held that:

"Section 57, read with section 56, of the Income-tax Act, 1961-Income from other sources - Deductions (Interest) Assessment years 2008-09 and 2009-10 Assessee, a Members Club, was established for promotion of sports and activities connected with the sports During relevant years, assessee received membership fee from various members which were kept in FDRs with banks - Assessee's case was that in case interest income from FDRS was taxed under section 56 as 'income from other services', it should have been allowed deduction under section 57(iii) while computing said income -Revenue authorities rejected assessee's claim-Whether eligibility for

deduction under section 57 (iii) arises only if expenditure has been laid out wholly and exclusively for purpose of earning income which is chargeable under said head 'income from other sources' Held, yes Whether since assessee failed to establish nexus between expenditure incurred under various heads including depreciation and had also failed to justify apportionment of expenditure to earning of interest income, its claim was rightly rejected by authorities below - Held, yes [Paras 32 and 35][In favour of revenue]"

6.8 The facts of the appellant's case is squarely covered with the facts of the case decided by ITAT Pune Bench. Keeping in view the aforesaid decision and also the findings given in the assessment order with elaborate reasons, I hold that the appellant is not eligible to claim deductions under section 57 of the Act. Accordingly, the disallowance made in the assessment is confirmed,

7. In the result, the appeal is dismissed.

5. Still aggrieved, the assessee has now filed second appeal with the Tribunal , and the Ld. Counsel for the assessee submitted that the assessee is a Co-operative Housing Society. It was submitted that the assessee incurs maintenance expenses for maintaining the society under various heads , and the assessee collects maintenance charges from its members. The ld. Counsel for the assessee submitted that the assessee received interest from FDR with Nationalized Bank as well as rental income was received from Hutch from letting out

of common terrace to Hutch(now Vodafone). The assessee has filed its copy of Audited Income and Expenditure account(placed on record in file), and it was submitted that the assessee has incurred total expenses under various heads towards maintenance of the housing society aggregating to Rs. 27,34,671/- , while the total receipts are to the tune of Rs. 28,08,191/- which included general maintenance of Rs. 11,13,600/- collected from its members, maintenance income of Rs. 65,000/- collected from tenants, paid parking of Rs. 1,07,000/- , other income of Rs. 22,400/- and transfer fee of Rs. 40,000/-. Apart from above , there is an income from interest on FDR of Rs. 3,82,193/- , Interest from members of Rs. 3,580/- , Rent from Hutch(net) of Rs. 10,62,390/- from letting out of common terrace to Hutch(now Vodafone), saving bank interest of Rs. 4,727/- , Torrent Interest income of Rs. 7,301/- . Thus, it was submitted that there is a surplus of Rs. 73,520/- (excess of total income over the expenditure) , and after claiming deduction of Rs. 50,000/- u/s 80P(2)(c)(ii), the income declared and offered for taxation by the assessee was Rs. 23,520/- in the return of income filed with Revenue. If the other income such as interest and rental income as above are excluded , there is a deficit as the expenditure towards maintenance were higher than maintenance collected from its Members/tenants. It was submitted that the assessee constructed 80 residential flats for its members , and in order

to keep maintenance low, it collected deposit of Rs. 50,000/- from each of its members which amount was kept in FDR with nationalized banks, and the interest received thereon is utilized to bear the maintenance cost of the society under different heads. The assessee has also relied upon judgment and order of Hon'ble Punjab and Haryana High Court in the case of *CIT v. Maruti Employees Co-Operative Housing Society Building Society Ltd. (2010) 320 ITR 254(P&H)* , and the judgment and order of Hon'ble Karnataka High Court in the case of *Totgars Co-Operative Sale Society Ltd. v. ITO (2015) 58 taxmann.com 35(Kar.)*, and it was submitted that the assessee is eligible for deduction u/s. 57 of the Act against the interest on deposit etc. received by the assessee. Thus, it was submitted that the assessee is to be allowed to set off interest/rental income and maintenance income etc. against the maintenance expenses of the society incurred under different heads. It was submitted that these maintenance expenses incurred for maintaining the society is for the benefit of the members of the society. The assessee submitted that either these expenses are to be allowed u/s 57 or Section 37 of the 1961 Act. Reference was also drawn to provisions related to set off and carried forward of losess including Section 70 and 71 of the 1961 Act The Ld. Sr. D.R. relied upon the decision of the Ld. CIT(A).

6. I have considered the contentions of both the parties and perused the material on record. I have observed that the assessee is a Co-operative Housing Society engaged in maintaining and upkeep of Residential Housing Society consisting of 80 residential flats constructed by it for its Members. The assessee filed its return of income on 20.03.2018, showing total income of Rs. 23,520/-. During the course of assessment proceedings, the A.O. observed that the assessee is Co-operative Housing Society , its main activity is to collect maintenances charges from all the members and spend the said amounts for meeting of the common expenses of society maintenances and that there is no business activity carried out by the assessee. The assessee has also received FDR interest Rs. 3,82,193/- and received rental income(net) of Rs. 10,62,390/- from letting out of common terrace to Hutch(now Vodafone), Interest From Member of Rs. 3,580/-, the saving bank interest income of Rs. 4,727/- and Torrent Interest income of Rs. 7,301/-. There were income received from Members towards General maintenance to the tune of Rs. 11,13,600/- , Paid Parking of Rs. 1,07,000/- , Tenant Maintenance income of Rs. 65,000/- and income from Transfer Fee of Rs. 40,000/- . The assessee has incurred maintenance expenses under various heads to the tune of Rs.27,34,671/-, and as per income and expenditure account the assessee has excess of income over expenditure of Rs.

73,520/-, if both the maintenance income as well rental/interest income are considered. The assessee has declared income of Rs. 23,520/- as taxable income in the return of income filed with Revenue, after claiming deduction u/s. 80P(2)(c)(ii) of Rs. 50,000/-. The A.O. did not allow the deduction of Rs. 14,60,191/- with respect to various interest income and rental income earned by the assessee as it was observed by the A.O. that the maintenance expenses etc. incurred by the assessee for maintaining the housing society are not incurred wholly and exclusively for the purpose of earning of interest income and rental income , and thus hit by Section 57(iii) (the assessee having declared its income under the head 'income from other sources' chargeable to tax u/s 56), and hence Rs. 14,60,191/- was disallowed and added to the income of the assessee by bringing the same to tax by the A.O.. The Ld. CIT(A) dismissed the first appeal filed by the assessee. The assessee is Co-Operative Housing Society and constructed 80 residential flats for its members, and now the maintenance and upkeep of the said housing society is carried out by the assessee. The assessee collects maintenance charges from its members and tenants, transfer fee on transfer of flat in the society, paid parking in the society etc. from members/tenants, and the said funds so generated are utilized for meeting common maintenance expenses of the housing society. The assessee has claimed that it collected interest free deposits of

Rs.50,000/- from each of its members with a view to keep regular maintenance charges being recovered from its members on the lower side , which interest free deposits were claimed by to be invested as FDR with banks for earning of interest income to be utilized for meeting common maintenance expenses of the society . The assessee has also tenanted its common terrace area to Hutch(now Vodafone) on which rent income(net) of Rs. 10,62,390/- were received. As per audited Income and expenditure account(placed on record in file) , the assessee after considering all the receipts including rental and interest income , earned net surplus of Rs. 73,520/- . The assessee claimed deduction u/s 80P(2)(c)(ii) of Rs. 50,000/- and offered balance amount of Rs. 23,520/- for taxation. If the other incomes by way of rental and interest income are excluded, there is a deficit of Rs. 13,86,671/- being excess of common expenses incurred by the assessee for maintenance and upkeep of the housing society over the collection from members towards maintenance expenses. There are no surplus in the instant case if the receipts from Members towards maintenance of housing society are co-related with the common expenses incurred by the housing society for maintaining the housing society, and rather there is a deficit of Rs. 13,86,671/-, if interest income and rental incomes are excluded. The assessee has arranged its affairs in the manner that it has kept its regular maintenance charges

recoverable from Members towards maintaining housing society at the lower levels , while deficit on account of excess of common maintenance expenses for maintaining housing society over maintenance charges recovered from its members are sought to be recovered from interest and rental income, and it could not be said that this arrangement of affairs are so organized by the assessee as an tax avoidance measure to evade taxes or to defraud revenue. The decision of Hon'ble Punjab and Haryana High Court in the case of *Maruti Employees (supra)* supports the stand of the assessee. No contrary decision is cited by Revenue before me. The claim of the assessee is for set off of the deficit being excess of common maintenance expenses incurred for maintaining the housing society and the collection from members towards maintenance charges , against rental and interest income is further fortified in the manner computation of income is made in the 1961 Act , wherein gross total income under the five heads of income are aggregated in the case of the tax-payers , and thereafter deductions under Chapter VI-A are allowed. Deduction u/s 80P is listed as one of the deductions allowed under Chapter VI-A for co-operative societies. The income is to be computed under the five different heads, and if there is a loss w.r.t. one source of income or under one head of income, set off of the said losses are allowed as provided under Chapter VI for 'Set off or Set off and carried forward of losses'

in the manner so provided under the said chapter . The assessee has declared income with respect to its activities as Housing Society for maintaining the residential society under the head 'Income from other sources' , and there is a deficit from the said source of income to the tune of Rs.13,86,671/- (if rental income as well interest income are not considered). The said rental income and interest income are also offered to tax by the assessee and sought to be taxed by Revenue , under the head 'income from other sources'. I do not find any bar in Section 70 and 71 as also other sections under Chapter VI dealing with 'Set off or Set off and carried forward' for set off of the said loss of Rs. 13,86,671/- against income from rent as well interest income earned by the assessee. It could be said that the assessee income from collection of maintenance charges from its members is not chargeable to tax keeping in view the concept of mutuality as no body can make profits by dealing with itself and hence on the same analogy losses are to be ignored , as the said collection of maintenance charges are applied towards the incurring of maintenance expenses for the upkeep/maintenance of the housing society which is for the benefit of the members of the housing society and there is a direct correlation between participant and the contributors. So far its collection from members of maintenance charges falling short of incurring of expenses for maintaining the housing society is concerned , there is a deficit of Rs. 13,86,671/-

w.r.t. this source of income. In the instant case, the interest income as well rental income has a nexus and attributability with the conduct of affairs of the housing society , as the interest income has mainly arisen from the interest free deposit raised from its members which stood invested in FDR with banks as well rental income is also from letting of common terrace area of the housing society itself , and further that the proceeds of interest income as well rental income are also utilized for furtherance of the main objects of the society i.e. the maintaining the housing society for the benefit of the Members, as could be seen that there is only net surplus of Rs. 73,520/- , of which Rs. 73,520/- has been offered to taxation after claiming deduction u/s 80P(2)(c)(ii). Thus, in my view in the instant case based on peculiar factual matrix as is emerging from the records , I do not find any bar of set off of deficit arising from shortfall in collection from its members towards maintenance of society vis-à-vis expenses incurred for maintaining housing society, against rental and interest income earned by the assessee which has nexus and attributability to the conduct of the affairs of the assessee. There are no allegations by authorities below that the assessee's claim of expenses towards maintenance of the housing society in its Audited Income and Expenditure account to the tune of Rs. 27,34,671/- is bogus or inflated or

not genuine. It is also not the case of the Revenue that the assessee has adopted an illegitimate device by seeking aforesaid set off as an tax avoidance measure or to evade taxes or to defraud revenue. It is also not the case of the Revenue that the surplus earned by the assessee to the tune of Rs. 23,520/- (after claiming deduction of Rs. 50,000/- u/s 80P(2)(c)(ii)) was not offered for taxation. I find merit in the appeal filed by the assessee, which stood allowed., more so keeping in view judgment and order of Hon'ble Punjab and Haryana High Court in the case of *Maruti Employees (supra)* which supports the stand of the assessee. This appeal is decided on the peculiar facts as are emerging from records and shall not have precedential value. I order accordingly.

7. In the result appeal filed by the assessee in ITA No. 177/Ahd/2023 for assessment year 2017-18 stand allowed.

8. Order pronounced in accordance with Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963 at Ahmedabad on 30.07.2024.

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

(True Copy)
Ahmedabad : Dated 30/07/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद