

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.688/M/2024
Assessment Year: 2013-14**

Modern Flats Private Limited 6 Modern Flats, 128 Wodehouse Road, Colaba, Mumbai PAN: AAACM7351H	Vs.	ITO 2(2)(3) Aayakar Bhavan, Mumbai
(Appellant)		(Respondent)

Present for :

Assessee by : Shri Anas Siddique, A.R.

Revenue by : Shri R. R. Makwana- SR. D.R.

Date of Hearing : 20 . 06 . 2024

Date of Pronouncement : 25 . 07 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059250082(1) Dated 01/01/2024 for the Assessment Year 2013-14.
2. Following grounds of appeal have been raised by the appellant:

- A. *“On the facts and circumstances of the case and in law, the Learned CIT (Appeals) erred in passing the Order u/s.250 in haste without considering the request for adjournment filed on December 29, 2023 and not considering the merits of the Grounds filed before him along with the Memorandum of Appeal.*
- B. *On the facts and circumstances of the case and in law, the Learned AO ought to have considered that the interest paid of Rs.2,56,089/- by the bank on fixed deposits was out of the interest accrued and not additional interest apart from what was reported in the Form 26AS of the appellant Company and if the same was added to Rs.3,27,214 which was the amount interest as per Form 26AS, then the return on bank fixed deposits of Rs.35.00 lakhs would be a phenomenal 16.66% $[(2,56,089 + 3,27,214)/35,00,000 \times 100]$, much higher than the going rate of 7% to 8% given by nationalized banks.*
- C. *On the facts and circumstances of the case and in law, the Learned AO erred in considering the payments of Rs.71,420/- made by ITC Limited and reported in the Form 26AS as unaccounted when the same was already included the contribution received from the members towards the building maintenance.*
- D. *On the facts and circumstances of the case and in law, the Learned AO erred in making an adhoc addition of Rs.87,320/- being 25% of the Operating expenses of Rs.3,49,282/- on the grounds that the same were not supported by vouchers, when the books of the appellant Company were statutorily audited under the Companies Act and an audit report also accompanied the financials submitted to him.*
The appellant craves leave to add, amend, or alter, modify or delete the above grounds of appeal.”

3. The facts of the case, in brief, are that the assessee has not filed its return of income voluntarily u/s. 139(1) of the Act for the Assessment year

2013-14. Subsequently, information was received by the Ld. AO that the assessee had deposited a sum of Rs.5,00,000/- during the financial year 2012-13 in its bank account maintained with Bank of India and also received interest u/s. 194A amounting to Rs.7,25,762/-. The Ld. AO, therefore, by recording the reasons initiated action u/s. 147 of the Income Tax Act and notice u/s. 148 was issued to the assessee. In response to that, the assessee filed the return of income declaring a loss of Rs.7,656/-, thereafter, notice u/s. 143(2) and 142(1) were issued to the appellant from time to time. However, no compliance was made. The Ld. AO also issued show cause notice to the assessee along with draft assessment order u/s. 144 of the Act which was again not complied with. The Ld. AO, therefore, passed best judgment assessment u/s. 144 r.w.s. 147 of the Income Tax Act and added a sum of Rs.4,25,302/- on account of cash deposits made, interest income earned, etc.

4. Aggrieved by the order of Ld. AO, the assessee filed appeal before the Ld. CIT (A) who vide the impugned order dismissed the appeal of the assessee on the ground that during the appellate proceedings neither any submission was filed nor any documentary evidences were filed to controvert the contentions made by the AO.
5. Aggrieved by the order of the Ld. CIT (A), this appeal has been preferred. During the appellate proceedings before us, the appellant has filed a paper book in which detailed submissions were given along with bank account

details, interest certificate, TDS certificate, Form no. 26AS. The submission made by the appellant is reproduced as under:-

1. *“The appellant Company was incorporated in 1952 under the Companies Act of 1913. Prior to the passing of the Maharashtra Co-operative Housing Societies Act, 1960, one of the forms of ownership of property and homes was a Limited Liability Company. The promoters buy the land in the Company's name, develop and construct a building. The various units in the building are then sold shares are allotted to the unit owners. Thus collective ownership is passed on to the various unit owners.*
2. *The main object of the Company is to manage and upkeep its property which is occupied by its members. The Company collects funds from its members in the form of maintenance charges, municipal taxes, car parking charges, sinking fund etc. the funds so collected are used to defray the various expenses like salaries of housekeeping staff, security persons, accountants, payment of water charges, municipal taxes, repairs to common facilities used by members, etc. It is a mutual association of the flat owners who would have otherwise formed a Housing Co-operative Society had the statute been in existence in 1952.*

3. *Most of the members are senior citizens over 70 years of age. In fact the two directors who managed the day to affairs Mr. TA Haidermota and Mr. Abdulla Olia are over 85 years old. Though they have been managing the affairs of the building satisfactorily, they are not well versed in computers. Thus when the notices u/s 143(2) and 142 (1) were posted on the Income Tax Portal, they had no knowledge about them. Moreover they were under the belief that their auditor, who doubled up as their income tax return filer would look after the tax matters also if any issues were raised.*
4. *The proceedings were begun during the period of the 'Corona Pandemic'. Since the directors were senior citizens they were confined to their homes by their families and therefore there was no attendance before the AO. The Company's auditor also wound up his practice in Mumbai because of failing health and moved to Pune. It was only because of old relations and familiarity with the Company's working that he continued as auditor. He may thus not have been regular in checking for notices posted/issued by the Department.*
5. *The Companies assessment was thus completed ex-parte by the AO on the basis of details available with him.*

Regarding addition of Rs.256,089/- as undisclosed interest

6. *During the financial year 2012-13, the Company earned Rs.327,323/- as interest on its fixed deposits kept with banks. For your perusal please find Form 26AS for the A Y 2013-14 which shows the amount earned. This amount being more than the amount reported in the Profit & Loss Account by the Company, the AO made an addition of Rs.10,473/- on account of the difference. The appellants have no objection to the said addition.*
7. *The AO has identified entries in the bank statements pertaining to interest credited which he could not tally with the amounts in the Form 26AS. He has treated such amounts aggregating to Rs.256,089/- as interest not offered for taxation and proceeded to add the same to the returned income. For your perusal please find attached Certificate of Interest issued by the Bank of India, Wodehouse Road, Colaba Branch which shows that totally Rs.327,322.86 was paid by them during the FY 2012-13. The interest credited in the bank is much lower than the amount reported in the Profit & Loss Account or the Form 26AS or the certificate. The amounts credited do not match the amounts in the Form 26AS as amount net of TDS has been credited. For example amount of Rs.11,321/- credited on 25.03.2013 is the net of Rs. (12,581 TDS 1260).*

Further the fact that an amount of Rs.41,800/- has been credited on 10.04.2012, means that accrued interest of previous year has also been paid. (Accrued interest is reported by the appellant in its balance sheet as at 31.03.2012, a copy of which is attached for your perusal).

8. *If the appellants were to account for the interest reflected in the Form 26AS and that credited in the bank account the total interest would be Rs.583,303 (327,323 + 256,089), which gives a phenomenal return of 16.66% on fixed deposits of Rs.35,00,000/- placed by the appellants with their bankers (who are a nationalized bank), when the going rate is not more than 8% to 9%.*

Regarding addition of Rs.71,420/- received from ITC Limited

9. *As regards receipts of Rs.71,420/- from ITC Limited are concerned, they are members of the appellant Company and own a flat in the building. The payments are their contribution towards maintenance charges and disclosed along with other members contribution under the head "Other Receipts". ITC Limited being the only corporate member deducts tax u/s 194C on the maintenance charges paid. The Learned AO has erred in treating the receipts from them as different from contribution received from other members.*

Regarding addition of Rs.87,320/- out of operating expenses

10. Generally the members pay their contribution towards the upkeep of the Company's property by cheques and the same is based on the built up area of the flats occupied by each member. Maintenance charges for the common area are recovered equally from each member as everybody enjoys them equally. Thus the deposits in the Companies account would be the contribution of the members towards maintenance, property tax, parking charges etc. It is very rare that a member would pay cash, and even if it is so, the same is instantly or on the next working day deposited in the Company's bank account.

11. The Company meets its obligation for payment of municipal taxes, staff salary, house-keeping, repair, water charges etc. from the funds so collected and accumulated in its bank accounts. The Company's accounts are duly audited under Company's Act and the expenses are vouched for genuineness and authorization. Most of the expenses are paid by cheques and only a negligible amount is paid in cash. For your perusal we are enclosing a copy of the bank statement where narrations have been given for major expenses. Given an opportunity, the appellant can give details of the expenses debited to the Profit & Loss Account and produce the necessary supporting.

12. *The Operating Expenses debited to the Profit & Loss account total to Rs.3,49,282/-. These expenses by their very nature have been incurred for the purpose of the building and its occupants. Each of these is supported by vouchers and if allowed we can provide the vouchers for your verification. The Learned AO has erred in making an arbitrary disallowance of 25% of the Operating Expenses which amounts to Rs.87,320/-. The AO ought to have realized that the Company is not in a business of trading or manufacture. In fact the aim of the Company is only to manage the up keep of its property, to pay tax, utility bills etc, and make orderly collection from the members to defray these expenses. The aim is not to make profit from the members. Even if there is profit, it is kept as a reserve to meet any major expenditure which may come up in the future. The surplus funds are not distributed but kept with banks in fixed deposits.*

13. *In the light of the above we pray that the appellants be given relief of Rs.414,829/- on account of the following wrong additions:*

<i>Nature of additions</i>	<i>Amount (Rs.)</i>
<i>Interest</i>	<i>Rs.2,56,089</i>
<i>Amount received from ITC Limited</i>	<i>Rs.71,420</i>
<i>25% out of operating expenses</i>	<i>Rs.87,320</i>
<i>Total</i>	<i>Rs.4,14,829</i>

6. We have considered the above submissions and we think it proper to remand the matter back to the file of the Ld. AO to consider the details filed the appellant and pass a fresh order by providing adequate opportunity of being heard to the appellant. The appellant is also directed to appear before the Ld. AO and make necessary compliance to explain its case with the help of all necessary documents/evidence.
7. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 25.07.2024.

**Sd/-
AMIT SHUKLA
JUDICIAL MEMBER**

**Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER**

Mumbai, Dated: 25.07.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.