

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1418/PUN/2023
निर्धारण वर्ष / Assessment Year : 2012-13

Raturaj Cooperative Housing Society Ltd., S. No.692/A-2, Raturaj Society, Satara Road, Pune- 411037. PAN : AAATR1116L	Vs.	ITO, Ward-5(1), Pune.
Appellant		Respondent

Assessee by : Smt. Deepa Khare
Revenue by : Shri Umesh Phade

Date of hearing : 31.07.2024
Date of pronouncement : 09.09.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 27.10.2023 passed by Ld CIT(A)/NFAC for the assessment year 2012-13.

2. The appellant raised the following grounds of appeal :-

- "1. The ld CIT(A) has erred in confirming addition of interest income on deposits of Rs13,23,708/- of Jain Mandir which has overriding title in favour of Jain Mandir and thus does not partake the character of income in the hands of the appellant.*
- 2. The ld CIT(A) has erred in law and on facts in not appreciating that the issue is decided by CIT (Appeal) 4 for AY 2008-09 and 2010-11 in favour of the Appellant.*

3. *The ld CIT(A) erred in law and on facts in holding that donations from non-members is not to be allowed as deduction or exemption thereby making an enhancement of income without giving notice u/s 251(2).*
4. *The ld CIT(A) erred in law and on facts in holding that donations from non-members is not to be allowed as deduction or exemption thereby making an enhancement of income in respect of new source of income not considered and added by ld AO*
5. *The appellant craves right to add, alter, delete, modify or amend any change or all the above grounds of appeal before or during the course of hearing.”*

3. The appellant also raised the following additional ground of appeal :-

“On facts and circumstances of the case, the reopening u/s 147 is invalid and void ab initio as it is based on recording of incorrect reasons. The facts stated in the reasons are not correct making the initiation of reassessment invalid and void ab initio.”

4. The facts of the case, in brief, are that the assessee is an AOP and did not file return of income u/s 139(1) of the IT Act. On the basis of information that the assessee is in receipt of bank interest income of Rs.35,13,633/- but has not filed its return of income, the reasons were recorded for reopening the assessment u/s 147 & after obtaining prior approval from the competent authority a notice u/s 148 was issued on 30.03.2019. The return of income in response to the above notice u/s 148 was filed by the assessee wherein interest on deposit from bank of Rs.4,33,108/- was disclosed. During the course of assessment proceedings, the Assessing Officer noticed

that according to Form 26AS, total interest receipt was Rs.17,56,816/- but in its computation of income the assessee has only considered Rs.4,33,108/- and balance interest Rs.13,23,708/- was not considered by the assessee. With the help of the notes to the computation of income, the interest amount of Rs.13,23,708/- was claimed to be capital receipt being interest on Deva Dravya Account. Vide order dated 27.12.2019 assessment order u/s 143(3) r.w.s. 147 of the IT Act was passed determining the total income at Rs.26,47,416/- as against the returned income of Rs.1,84,031/-.

5. Being aggrieved with the above assessment order, the assessee preferred first appeal before the ld. CIT(A)/NFAC. After considering the reply of the assessee vide order dated 27.10.2023, the ld. CIT(A)/NFAC partly allowed the appeal of the assessee by observing as under :-

“6.2.5 For the reasoning mentioned in the preceding paras of this order, I respectfully disagree with the decision of my learned predecessor, Ld. CIT(A)-4, Pune who had decided the issue in AY 2008-09 & 2010-11 in favour of the appellant and I hold that this is not a case of diversion of income by an overriding title.

6.2.6 Regarding the second addition of Rs. 13,23,708/- made by the AO, it is seen that the AO had begun this issue with the note appended by the appellant in computation of income regarding the receipts of donations. The heading of the para also shows that the AO intended to add the amount of donation but mistakenly again added back the amount of interest.

6.2.7 It is noted here that the donations have been received from members and non-members both. Since the appellant is a cooperative

housing society registered under the Maharashtra Cooperative Societies Act, the voluntary donations received from members are not taxable following the concept of mutuality.

Considering the above and reasoning in preceding paras of this order, it is held that the donations received from non-members during the previous year 2011-12 (AY 2012-13) and the interest income received by the appellant-society from commercial banks (which are not registered under any Central or State Cooperative Societies Act) during the previous year 2011-12 (AY 2012-13) is not allowed as deduction/exemption from taxation.

The AO is directed to re-compute the income of the appellant accordingly. Ground no. 1 & 2 are partly allowed subject to the above directions.

6.3 Ground 3: This relates to the plea that the appellant craves right to add, alter, delete, modify or amend any change or all the above grounds of appeal before or during the course of hearing.

6.3.1 This ground is general in nature and the additional ground taken up by the appellant has been dismissed in above paras of his order. Thus, this ground is dismissed.

7. As a result, the appeal is treated as partly allowed.”

6. Being aggrieved with the above order, the assessee preferred second appeal before this Tribunal.

7. The ld. AR submitted before us that the order passed by the ld. CIT(A)/NFAC is not correct. It was submitted by the counsel that the Assessing Officer is wrong in making two additions on same amount and the ld. CIT(A)/NFAC also committed error in sustaining the same. It was also submitted by the counsel that total interest on bank deposit was only Rs.17,56,816/-, out of which Rs.4,33,108/- was shown under the head “Income from other sources” i.e. bank interest and balance interest income of

Rs.13,23,708/- was not included in total income being interest received on Deva Dravya Account not being receipt of revenue in nature but of capital in nature. The ld. AR also submitted that for earlier years i.e. for assessment years 2008-09 to 2010-11 similar additions were made by the Assessing Officer and deleted by the ld. CIT(A) but for this year ld. CIT(A)/NFAC erred in not following those orders. With the help of additional ground ld. AR challenged the proceedings initiated u/s 147/148 of the IT Act. The ld. AR also challenged the findings given by the ld. CIT(A)/NFAC in last two lines of para 6.2.7 of its order wherein the ld. CIT(A)/NFAC has directed the Assessing Officer to re-compute the income of the appellant.

8. The ld. DR supported the orders passed by the subordinates authorities and requested to confirm the same.

9. We have heard the ld. Counsel from both the sides and perused the material available on record. We find that the assessee is an AOP and is in possession of two PAN but no return of income u/s 139(1) was filed in respect of either of the PAN number. Although it was claimed before the Bench that the assessee requested for de-duplication of one PAN but due to some technical glitch, another PAN could not be cancelled. We further find that the

assessee was in receipt of bank interest of Rs.17,56,816/- and out of which Rs.4,33,108/- was shown as income by the assessee in his computation of income and balance interest income of Rs.13,23,708/- was not included in the computation of income being capital in nature. It was the contention of the assessee that this interest income of Rs.13,23,708/- was earned on capital receipt deposited in bank account. Therefore, the interest arising on capital receipt also falls in the category of capital receipt, hence, not forming part of total income. We find that in the assessment order, the Assessing Officer has made addition of Rs.13,23,708/- as per para 5 of the assessment order being the difference between interest of Rs.17,56,816/- credited/appearing in Form 26AS statement and the amount of Rs.4,33,108/- shown as income by the assessee in its computation, and thereafter, again in para 6.2 the same amount of Rs.13,23,708/- was added as income of the assessee on the basis of note mentioned in the bottom of computation of income. The addition made according to para 6.2 of the assessment order does not appear to be correct. This fact has also been accepted by the Id. CIT(A)/NFAC in his order i.e. in para 6.2.6. We further find that the Id. CIT(A)/NFAC in his order partly allowed the appeal of the assessee by directing the Assessing Officer to re-compute the

income of the appellant. This observation and direction of the ld. CIT(A)/NFAC is clear cut violation of section 251(1) of the IT Act according to which ld. CIT(A)/NFAC did not possess any power to set-aside or remand the matter back to the Assessing Officer for re-computing the income of the assessee. In our considered opinion, the direction given by the ld. CIT(A)/NFAC to the Assessing Officer to re-compute the income of the appellant tantamount to setting-aside the matter back to the Assessing Officer, which is not permissible under the provisions of the IT Act. We are of the considered opinion that when there is no addition made by the Assessing Officer on the basis of receipt of donations from members or non-members, the ld. CIT(A)/NFAC committed grave error in raising new ground which was neither considered by the Assessing Officer nor any addition was made by the Assessing Officer on that ground. Considering the totality of facts and without going into the merits of the case, we deem it appropriate to set-aside the order passed by the ld. CIT(A)/NFAC and remand the matter back to the file of the ld. CIT(A)/NFAC to decide the appeal afresh in the light of our above observation/discussion as well as in accordance with law after providing reasonable opportunity of hearing to the assessee. The ld. CIT(A)/NFAC shall pass the order

as per fact and law after providing reasonable opportunity of being heard to the assessee. The assessee is also hereby directed to respond to the notice issued by the Id. CIT(A)/NFAC without taking any adjournment under any pretext. Thus, the grounds of appeal raised by the assessee are partly allowed.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on 09th day of September, 2024.

Sd/-
(G. D. PADMAHSHALI)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 09th September, 2024.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.