

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA Nos.575/Hyd/2023 & ITA 34/Hyd/2024**
(निर्धारण वर्ष/Assessment Years: 2017-18 & 2018-19)

Indira Legislators Mutually Aided Cooperative Housing Society Ltd Hyderabad PAN:AAAAI4987M	Vs.	Income Tax Officer Ward 5(2) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Advocate P Vinod appeared for Advocate M.V. Anil Kumar	
राजस्व द्वारा/Revenue by::	Shri Srinath Sadanala, DR	
सुनवाई की तारीख/Date of hearing:	05/09/2024	
घोषणा की तारीख/Pronouncement:	05/09/2024	

आदेश/ORDER

Per Laliet Kumar, J.M

These appeals filed by the assessee are directed against the common order dated 24/09/2023 of the learned CIT (A)-NFAC Delhi, relating to A.Ys.2017-18 & 2018-19 respectively. Since the issues raised in these two appeals are common, for the

sake of convenience, these were heard together and are being disposed of by this common order.

2. The brief facts of the case are that the assessee society filed its return of income for the A.Y.2017-18 on 30-03-2018 claiming the status as that of Mutual benefit society, declaring income at NIL. The return was processed U/s.143(1) by CPC. Subsequently, the case was selected for scrutiny notice u/s.143(2) of the Income Tax Act, 1961 dated 29-08-2018 was issued and duly served on the assessee. Thereafter, notices 142(1) along with questionnaire were issued and assessee furnished the information called for to which the assessee filed requisite details. The Assessing Officer observed from the return of income filed for A.Y.2017-18 that during the year under consideration, the assessee has shown interest on FDRs with SBH at Rs.90,95,519/- as 'income from other sources' and claimed the entire amount as expenses/deduction u/s.57 of the Income Tax Act, thereby declaring NIL income. The Assessing Officer rejected contentions of the assessee since the assessee mainly contended that the funds were kept with non-member for the benefit of members only as the appeals are pending before Hon'ble Supreme Court and no developmental activity started. However, the basic and distinctive feature of principles of mutuality is all participants must be contributors to the common fund i.e., what is returned to members should be contributed by a member only. The Assessing Officer further observed that the nature of the transaction

between the assessee and the banks would disqualify the application of the principle of mutuality. The basic principle for applying mutuality concept is that there must be a complete identity between the contributors and participators. According to the Assessing Officer, in the present case, the interest income was earned from bank which was non-member of the assessee society will not fulfill this basic principle because the arrangement lacks a complete identity between contributors and participators. With the funds of the club, member banks engaged in commercial operations with third parties outside of the mutuality and consequently, violating the one to one identity between the contributors and participators. Thus, the Assessing Officer completed the assessment and disallowed an amount of Rs. 90,95,519/- on the FDRs.

3. In this regard, the learned AR has moved an application for adjournments of the appeals. We do not find any reason to adjourn the cases as the issues involved in these appeals are squarely covered by the decision of the Hon'ble Supreme Court in the case of Bangalore Club vs. CIT (2000) 243 ITR 89 (SC) as well as the decision of the Hon'ble Supreme Court in the case of Secunderabad Club vs. CIT. With regard to the Ground No.1, the learned DR has brought to our notice the order passed by the learned CIT (A) whereby the learned CIT (A) disallowed the interest earned by the assessee on account of deposits made in the nationalized Banks. It was the contention of

the Assessing Officer/learned CIT (A) that the principle of mutuality is not applicable once the money has been deposited in the Bank as the bank is not a member of the assessee society.

4. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We find that the issue involved in these appeals are squarely covered by the decision of the Hon'ble Supreme Court in the case of Bangalore Club vs. CIT and Secunderabad Club vs. CIT (Supra). Respectfully following the decision of the Hon'ble Supreme Court, we reject the grounds taken by the assessee.

5. The next ground raised by the assessee is with respect to allowing expenditure incurred by the assessee. In this regard the Assessing Officer has held as under:

12. It is also seen from the Income & Expenditure Account, the assessee society has claimed legal expenses of Rs.21,00,000/- and other expenses of Rs.1,63,352/- aggregating to Rs.22,63,352/-. In this connection, during the course of assessment proceedings, the assessee submitted that the legal expenses were incurred towards court fees and other court expenditure for the pending cases of the assessee society before Hon'ble Supreme Court. It was also seen from the submissions of the assessee reproduced in para-5 that Hon'ble High Court has stayed all further developmental activities and assessee society's petition is pending before Hon'ble Supreme Court and hence no activities were carried out during the year. It is further observed from the Balance Sheet, the assessee has shown capital work-in-progress of building works, road works etc., aggregating to Rs.16.10 crores. Since the assessee society is not carrying out any activity towards the objects due to pending litigation, the expenses claimed during the year aggregating to Rs.22,63,352/- are not eligible for deduction. The assessee is at liberty to capitalize these expenses to capital work in progress. Moreover, the major expenditure involved i.e legal

expenses of Rs.21 lakhs is incurred towards court fees to protect the land etc., which cannot be termed as 'revenue expenditure' due to perpetual benefit and required to be capitalized.

6. The learned CIT (A) held as under:

8. Vide ground of appeal no 4 appellant has challenged that the interest is in the nature of capital receipt not chargeable to tax in the hands of the Society, the decision of Hon'ble Supreme Court of India in case of Bangalore Club (350 ITR 509) are not applicable to your appellant's case on facts.

8.1 During the course of appellate proceedings, notices for hearing were issued to appellant on 22.01.2021 & 16.9.2023. In response, appellant filed written submission and the relevant portion of the same is reproduced hereunder for reference.

Alternatively, we submit that the society dwells on the contributions from its members. The amounts is collected for paying out on various expenses of the society. The contributions are deposited with banks as FD till they are utilised for the intended purpose. In this process the society earns interest which goes to reduce/mitigate the cost of development to its members, hence the same is in a nature of a capital receipt not chargeable to tax in the hands of the society

8.2 It is to be noted that the contributions received from the members are capital in nature if they are utilized for the intended purpose of the society. However, once the same has been invested in the bank and earned interest income then the said interest income cannot be treated as capital in nature. As the intention of the appellant was itself to earn interest income. Therefore, the investment in FD is of capital in nature, however, the resultant interest earned thereof is revenue in nature. Hence, ground of appeal no 4 is hereby dismissed.

9. Vide ground of appeal no 5 appellant has challenged that assessing officer should have allowed deduction of expenditure incurred u/s 57 of the Income-tax Act, 1961.

9.1 With regard to above grounds of appeal the relevant portion assessment order u/s 143(3) of the IT Act of the AO is reproduced hereunder for reference

12. It is also seen from the Income & Expenditure Account, the assessee society has claimed legal expenses of Rs.21,00,000/- and other expenses of Rs.1,63,352/- aggregating to Rs.22,63,352/-. In this connection, during the course of assessment proceedings, the assessee submitted that the legal expenses were incurred towards court fees and other court expenditure for the pending cases of the assessee society before Hon'ble Supreme Court. It was also seen from the submissions of the assessee reproduced in para-5 that

Hon'ble High Court has stayed all further developmental activities and assessee society's petition is pending before Hon'ble Supreme Court and hence no activities were carried out during the year. It is further observed from the Balance Sheet, the assessee has shown capital work-in-progress of building works, road works etc., aggregating to Rs.16.10 crores. Since the assessee society is not carrying out any activity towards the objects due to pending litigation, the expenses claimed during the year aggregating to Rs.22,63,352/- are not eligible for deduction. The assessee is at liberty to capitalize these expenses to capital work in progress. Moreover, the major expenditure involved i.e legal expenses of Rs.21 lakhs is incurred towards court fees to protect the land etc., which cannot be termed as 'revenue expenditure' due to perpetual benefit and required to be capitalized."

9.2 During the course of assessment proceedings, AO has noticed that the appellant has claimed expenses of Rs.22,63,352/-. However AO denied the expenses claimed by the appellant amounting to Rs.22,63,352/- since the Hon'ble High court stayed all development activity of the society and hence no activities were carried out during the year. Further, major expenditure involved i.e legal expense of Rs.21,00,000/- was towards court fee to protect the land which cannot be termed as revenue in nature.

9.3 During the course of appeal proceedings, the appellant has not submitted any documentary evidence regarding the above expenses to show that the same have been incurred in order to earn the above interest income. AO has rightly disallowed the expense incurred on court expenses as the same are not incurred in order to earn the above interest income. Hence ground of appeal no 5 is hereby dismissed.

10. Ground of appeal no 6 is general in nature and does not require any adjudication. Accordingly, ground of appeal no 6 is dismissed.

7. We have heard the rival contentions and perused the material available on record. As there was no able assistance from the assessee as the assessee chose to be remain absent in the matter. We are of the considered view that the expenditure debited by the assessee are normal administrative and general expenses incurred by the assessee for day-to-day maintenance of the Society, therefore, we are of the considered opinion the expenditure are allowable under the Act. In the light of the above, we allow the grounds taken by the assessee. Furthermore, grant of stay by the Hon'ble High Court is no ground to reject the claim

of the assessee, more particularly when the expenditure were incurred for and on behalf of the assessee for achievement of its objects. Facts of the appeals are identical; hence both the appeals are allowed for statistical purposes.

8. In the result, appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 5th September 2024.

Sd/- (MANJUNATHA, G.) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 5th September, 2024

Vinodan/sps

Copy to:

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1	Indira Legislators Mutually Aided Coop. Housing Society 1, Congress Legislature Party Office, Gandhi Bhavan, S.O (Nampally) Hyderabad 500001
2	Income Tax Officer Ward 5(2) IT Towsers, AC Guards, Masab Tank, Hyderabad 500004
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order