

आयकर अपीलिय अधिकरण
दिल्ली पीठ "एफ", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

आअसं.2861 और 2855/दिल्ली/2024 (नि.व. 2016-17 और 2017-18)
ITA No. 2861 and 2855/DEL/2024 (A.Ys.2016-17 & 2017-18)

Assistant Commissioner of Income Tax,
Circle-3(1), HSIIDC Building, Udyog Vihar, Phase-5,
Gurgaon, Haryana 122016

..... अपीलार्थी/Appellant

बनाम Vs.

Park Place Condominium Association,
DLF City, Phase-5, Sector 54, Gurgaon,
Haryana 122011

PAN: AACAP-0318-B

..... प्रतिवादी/Respondent

Assessee by : Shri Vaibhav Jain, Advocate
Department by : Ms. Harpreet Kaur Hansra, Sr. DR

सुनवाई की तिथि/ Date of hearing : 19.02.2025

घोषणा की तिथि/ Date of pronouncement: : 09.05.2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the Department for AY 2016-17 and 2017-18 are directed against the orders of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)'), for respective assessment years. Both impugned orders are of even date i.e. 29.02.2024. Since identical issues are involved in both the appeals, these appeals are taken up together for adjudication and are decided by this common order.

ITA No. 2861/Del/2024 for AY 2016-17

2. The appeal of Revenue time barred by 37 days. The Revenue has filed petition for condonation of delay in filing of appeal. After perusal of the same we are satisfied that delay in filing of appeal is not intentional but is for the reason stated in petition which appears to be *bonafide*. Thus, delay of 37 days in filing of appeal is condoned and appeal is admitted for adjudication on merits.

3. The Revenue in appeal has assailed the order of CIT(A) by raising following grounds:-

“2. The Ld. CIT(A) has erred in deleting the addition of Rs 2,82,98,482/- in case of the assessee which is a AOP on account of interest income cared from bank but not offered to tax u/s 56 of the Income Tax Act, 1961 without considering the fact that the distribution of interest income earned among the respective members is an outcome of the caring of interest income and not an expenditure incurred to earn interest income and so is not allowable as expenditure incurred to earn income u/s 57(iii) of the Income Tax Act, 1961.

3. That the appellant craves for the permission to add delete or amend grounds of appeal before or at the time of hearing of appeal.”

4. Brief facts of the case as emanating from records are: The assessee is a Resident Welfare Association and filed its return of income in the status of AOP declaring income of Rs.43,65,420/-. During the period relevant to assessment year under appeal, the assessee/respondent had received Rs.5,71,20,988/- under different heads of income including Rs.2,82,98,482/- as interest on IBMS. The assessee claimed aforesaid interest income as exempt. The Assessing Officer (AO) rejected assessee's claim and made addition of the aforesaid amount vide assessment order dated 17.12.2018 passed u/s. 143(3) of the Income Tax Act,1961(hereinafter referred to as 'the Act'). The assessee carried the issue in

appeal before the CIT(A). The CIT(A) deleted the addition following decision of Tribunal in the case of *Belaire Condominium Association in ITA No. 655/Del/2018, decided on 25.04.2018*. Hence, present appeal by the Revenue.

5. Ms. Harpreet Kaur Hansra, representing the department strongly supported findings of the AO and prayed for reversing findings of the CIT(A). The Id. DR submitted that the interest income declared by the assessee is taxable and the CIT(A) has erred in deleting the same.

6. Per contra, Shri Vaibhav Jain appearing on behalf of the assessee vehemently defended the impugned order and prayed for dismissing appeal of the Revenue. The Id. Counsel submits that the issue is squarely covered by the order of Tribunal in the case of *Belaire Condominium Association (supra)*. The CIT(A) has followed judicial discipline and thus, allowed relief to the assessee after considering decision of the Tribunal.

7. Both sides heard, orders of the authorities below examined. The short issue in appeal is; Whether the interest received by the assessee on IBMS is exigible to tax? The assessee is a Resident Welfare Association and had filed return of income in the status of AOP. We find that identical issue was considered by the Coordinate Bench of the Tribunal in the case of *Belaire Condominium Association (supra)*. The Coordinate Bench held that interest income of the assessee therein is not liable to tax. The Tribunal observed as under:-

“10. We have considered the rival submission and perused the order passed by the lower authorities. There is no dispute to the fact that assessee is a registered society form with the basic object to provide for maintenance and repair of common arrears and facilities of the building to its members. There is no dispute about the maintenance charges being collected and utilised towards

maintenance. The dispute is regarding the interest income earned by it on deposit with the Bank made out of the security deposit obtained from its members. The AO has held that the interest earned on it is not covered by the principle of mutuality after the judgment of the Supreme Court in the case of Bangalore Club (Supra). The alternative contention of the assessee that interest paid by it on such security deposit is to be set off against interest income earned on such deposit has also been rejected by the AO. After going through the facts of the case we are of the considered opinion that the AO has gone wrong in rejecting this contention of the assessee society. As rightly pointed out by the learned AR that the assessee society has obtained the interest bearing maintenance security called IBMS from the flat owners and such security deposit has been deposited with the Bank on which interest has been earned. Thus, there is a direct nexus in earning interest on such fixed deposit with Bank and payment of interest on the security deposit to the flat owners. The interest expenditure has been incurred wholly and exclusively for earning such interest income on Bank deposit. As per the Apartment buyers agreement there is an obligation on every buyer to make security deposit and there is corresponding obligation on the society to pay interest on such deposit. Thus, the contention of the learned AR that this interest expenditure has not been incurred to earn interest income is incorrect. The assessee society has paid interest each one after deducting tax at source. Thus, it is not a case of exemption on the principle of mutuality. Such interest paid by the assessee society is taxable in the hands of the Apartment owner. In view of these facts, we are of the view that interest expenditure is to be set off against the interest income. As regards the AO's contention that interest paid to member is not eligible deduction in the case of AOP under Section 40 (ba), we have perused the said Section. This clause excludes registered society from its applicability. Accordingly, this clause will not be applicable to the assessee society. Moreover, as rightly contended by the learned AR Section 40 (ba) is applicable while computing business income. This clause is not applicable while computing income from other sources. There is no prohibition in Section 57 (iii) under which deduction of interest is eligible to the assessee society.

11. Accordingly, we direct the AO to delete the addition of Rs. 1,63,77,013 made on account of the interest. In the result appeal of the assessee is allowed.”

8. We find no infirmity in findings of the CIT(A), in deciding the issue in line with the decision rendered by Tribunal. Therefore, solitary ground raised by the Revenue in appeal is devoid of any merit, hence, dismissed.

9. In the result, appeal of the Revenue for AY 2016-17 is dismissed.

ITA No. 2855/Del/2024 for AY 2017-18

10. The Revenue has assailed the findings of CIT(A) in impugned assessment year on identical issue as was raised in appeal for AY 2016-17, that is with regard to deleting of interest income Rs.2,87,89,936/-. Both sides unanimously stated that the issue raised in present appeal is identical to the one raised in AY 2016-17, hence, the submissions made for AY 2016-17 would equally hold good for AY 2017-18.

11. Since, the issue is identical in both appeals, the findings given by us while adjudicating appeal of Revenue for AY 2016-17 would mutatis mutandis apply to present appeal as well as. For parity of reasons, appeal of the Revenue for AY 2017-18 is dismissed.

12. To sum up, appeal of the Revenue for AY 2016-17 and 2017-18 are dismissed.

Order pronounced in the open court on Friday the 09th day of May, 2025.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 09/05/2025

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT/CIT(A)
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI