

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

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER**

**ITA NO. 432/MUM/2015 : (A.Y : 2011-12)**

CCI Chambers Co-op. Hsg. Soc. Ltd. Vs. ITO-12(3)(3),  
CCI Chambers, Dinshaw Wachha Mumbai (Respondent)  
Rd., Churchgate, Mumbai 400020  
**PAN : AAAJC0006E** (Appellant)

**Assessee by : Ms. Neha Barve**  
**Revenue by : Shri Santosh Mankoskar**

**Date of Hearing : 23/06/2016**  
**Date of Pronouncement : 30/06/2016**

**ORDER**

The captioned appeal by the assessee is directed against the order of CIT(A)-23, Mumbai dated 22.10.2014, pertaining to the Assessment Year 2011-12, which in turn has arisen from the order passed by the Assessing Officer dated 28.12.2013 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, the solitary dispute arises from the action of the Assessing Officer in taxing an amount of Rs.44,00,000/- claimed to be received by the assessee-society as voluntary contribution from outgoing member towards building repair and amenity fund.

3. The Assessing Officer has noted in the assessment order that as per the history in the assessee's case, the aforesaid contribution was

not found to be voluntary and, therefore, the same was held not free from taxation under the principle of mutuality. The CIT(A) has also affirmed the stand of the Assessing Officer inspite of the fact that on a similar issue, the Tribunal in assessee's own case for earlier Assessment Years of 2005-06, 2008-09 and 2009-10 has decided the issue in favour of the assessee. The CIT(A) held that the aforesaid amount does not attract the principle of mutuality because the transfer fee received by the assessee was more than the amount of transfer fee prescribed by the notification issued by the State of Maharashtra. Notably, it has been claimed by the Revenue that the amount has been received by the assessee-society from an outgoing member in connection with the transfer of his share in respect of the housing unit in the society. The claim of the assessee was that such sum was received as a voluntary contribution from the outgoing member towards building repair and amenity fund to meet the expenses of heavy repairs of society building and providing amenities to the members of the society. Therefore, according to the assessee, the doctrine of mutuality applies to such receipts and, therefore, the same is not exigible to tax.

4. Before me, the aforesaid submissions have been reiterated by the learned representative for the assessee. Reliance has also been placed on the following three decisions of the Tribunal in the assessee's own case :-

- i) ITA No. 2494/Mum/2010 dt. 14.10.2010 (A.Y 2005-06);
- ii) ITA No. 6509/Mum/2011 dt. 29.8.2012 (A.Y 2008-09); and
- iii) ITA No. 5986/Mum/2012 dt. 29.11.2013 (A.Y 2009-10)

5. The learned representative for the assessee also assailed the decision of CIT(A) according to which the amount of transfer fee received over and above the permissible amount was liable to be taxed. The learned representative pointed out that the CIT(A) has erred in wrongly appreciating certain observations of the Hon'ble Bombay High Court in the case of *Sind Co-op. Hsg. Soc. Ltd.*, 317 ITR 47. According to her, such an objection has been further considered by the Hon'ble Bombay High Court itself in its judgment dated 18.12.2014 in *CIT vs. Darbhanga Mansion CHS Ltd.* (ITA No. 1474 of 2012) in favour of the assessee's stand. It was, therefore, contended that the precedents in the assessee's own case by way of orders of the Tribunal clearly bring out that the principle of mutuality is applicable to such receipts and that there was no justification in the action of the Assessing Officer.

6. On the other hand, the Id. DR appearing for the Revenue has primarily referred to the reasoning adverted to by the lower authorities, which I have already noted in the earlier paragraphs and is not being repeated for the sake of brevity.

7. Factually speaking, the material on record clearly establishes that similar amount received by the assessee from outgoing members in the past have been accepted by the Tribunal to be in the nature of voluntary contribution and also eligible to the benefits of the doctrine of mutuality. In fact, in Assessment Year 2008-09, the Tribunal in its order dated 29.8.2012 (*supra*) was considering, *inter-alia*, an objection by the Revenue that the transfer fee received in excess of the notification of the State Government of Maharashtra does not get the

benefit of principle of mutuality. Similar argument is being raised in the instant year also. In the Assessment Year 2008-09 (*supra*) the Tribunal did not find any force in such a plea. Similar is the situation for other assessment years also. Be that as it may, we find that the judgment of the Hon'ble Bombay High court in the case of Darbhanga Mansion CHS Ltd. (*supra*) clearly concludes the controversy in favour of the assessee. Even in the case of Darbhanga Mansion CHS Ltd. (*supra*), claim of the Revenue was that if a society was to receive an amount in excess of Rs.25,000/-, i.e., the amount permitted by the notification issued by the State of Maharashtra, then such contributions will not get the benefit of principle of mutuality even if the amount is received from the member. The Hon'ble Bombay High Court repelled this argument and did not find it potent to displace the principle laid down in the earlier judgment in the case of Sind Co-op. Hsg. Soc. Ltd. (*supra*). The following the discussion in the order of the Hon'ble Bombay High Court in the case of Darbhanga Mansion CHS Ltd. (*supra*) is worthy of notice :-

*10. Mr. Malhotra trying to persuade us and by contending that the Division Bench in **Sind Co-operative Housing Society** (*supra*) was not concerned with the legal effect of Government Notification dated 9th August, 2001. That placed a cap or outer limit of Rs.25,000/- on receipt of transfer fee and occasioned by transfer of a flat. That amount has to be received and retained by the Society under that head. The submission is that the Division Bench has clarified the matter in the judgment itself. In that regard our attention is invited to para 43 and preceding paragraphs of the report. Mr. Malhotra would submit that charging of transfer fees as per bye laws has no element of trading or commerciality, that is the principle on which the Division Bench proceeded. It also proceeded by holding that the contribution can come from both the outgoing or incoming members. However, so long as there was a principle of mutuality and which could be applied,*

then according to Mr. Malhotra this judgment must be seen as restricted to that aspect alone. More so, when in the case of **Sind Co-operative Housing Society** (supra) there was no restriction or outer limit on the transfer fees.

11. Upon careful perusal of the Judgment passed by the Division Bench and the order passed by the Tribunal impugned in this case, we see no merit in this contention of Mr. Malhotra. The very issue and the very question was raised repeatedly in the case of the Assessee Society. Repeatedly the Revenue has failed in convincing the Tribunal that **Sind Co-operative Housing Society** (supra) will not cover the Society's case. The contribution is made to the repair fund or to the general fund and credited as such. While it may be true that it is occasioned by transfer of a flat and garage, yet, we do not see how merely because there was cap or restriction placed on the transfer fees or the quantum thereof, in this case the principle of mutuality cannot be applied. The underlying principle and of a co-operative movement has been completely overlooked by the Counsel for the Revenue. The Revenue seems to be of the view that a Co-operative Housing Society makes profit, if it receives something beyond this amount of Rs.25,000/-. There has to be material brought and which will have a definite bearing on this issue. If the amount is received on account of transfer of a flat and which is not restricted to Rs.25,000/- but much more, then different consideration may apply. However, in the present case, what has been argued and vehemently is the amount was received by the Society when the flat and the garage were transferred. Therefore, it must be presumed to be nothing but transfer fees. It may have been credited to the fund and with a view to demonstrate that it is nothing but a voluntarily contribution or donation to the Society, but still it constitutes its income. However, for rendering such a conclusive finding there has to be material brought by the Revenue on record. Beyond urging that it has been received at the time of a transfer of the flat and credited to such a fund will not be enough to displace the principle laid down in the decision of **Sind Co-operative Housing Society**. The attempt of the Revenue therefore is nothing but overcoming the binding judgment of this Court. In the present case, the Commissioner and the Tribunal

both have held that the receipt may have been occasioned by the transfer but the principle of mutuality will still apply. It is a typical relationship between the member of the Co-operative Society and particularly a Housing Society and the Society which is a body Corporate and a legal entity by itself that is forming the basis of the principle laid down by the Division Bench. Co-operative movement is a socio economic and a moral movement. It has now been recognized by Article 43A of the Constitution of India. It is to foster and encourage the spirit of brotherhood and co-operation that the Government encourages formation of Co-operative Societies. The members may be owning individually the flats or immovable properties but enjoying, in common, the amenities, advantages and benefits. The Society as a legal entity owns the building but the amenities are provided and that is how the terms "flat" and the "housing society" are defined in the statute in question. We do not therefore find any reason to deviate from the principle laid down in **Sind Co-operative Housing Society's** case and which followed a Supreme Court judgment. In the present case, therefore, the Tribunal following its earlier views and applying the ratio of this judgment, dismissed the Revenue's Appeal and confirmed the Commissioner's finding. The concurrent findings, therefore, in this case are in consonance with the factual materials brought on record. There is substance in the argument of Mr. Irani that the Assessing Officer had before him the material in the form of the bye-laws of the Society. The bye-laws also are in consonance with the Government Resolution and stipulate a sum of Rs.25,000/- towards transfer fees. The Assessee in this case is presumed to have received nothing but transfer fees and it is that underlying presumption which has prevailed upon the Assessing Officer to take a particular view.

12. We find that the Assessing Officer has been therefore, rightly corrected by the Commissioner. Without any material, cogent and satisfactory, being produced, the sum and in its entirety as credited could not be assumed to be transfer fees. The receipt thereof may have been occasioned by the transfer of the flat and garage. In such circumstances, we do not find that the Tribunal committed any error of law apparent on the face of the record in dismissing the Revenue's

*Appeal. Its order cannot be termed as perverse as well. The Appeal is devoid of merits and is dismissed. No order as to costs.*

8. In my considered view, the fact-situation in the present case is fully governed by the aforesaid authoritative pronouncement of the Hon'ble High Court in the case of Darbhanga Mansion CHS Ltd. (*supra*) and, therefore, in my view, the CIT(A) erred in not deciding the issue in favour of the assessee following the precedents in the assessee's own case by way of orders of the Tribunal for Assessment Years 2005-06, 2008-09 and 2009-10, which have been rendered under identical situations. As a consequence, I set-aside the order of CIT(A) and direct the Assessing Officer to delete the addition.

8. Resultantly, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 30<sup>th</sup> June, 2016.

Sd/-  
**(G.S. PANNU)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 30<sup>th</sup> June, 2016

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai