IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-II', NEW DELHI

Before Sh. N. K. Saini, Accountant Member

ITA No. 7056/Del/2014 : Asstt. Year : 2010-11

Beverly Park-1, Condominium, Beverly Park-1 Apartments, Mehrauli, Gurgaon Road, DLF City Phase-II, Gurgaon-121001	Vs	Income Tax Officer, Ward-1(1), Gurgaon
(APPELLANT)		**(RESPONDENT)**
PAN No. AAAAB1802C		

Assessee by : Sh. A. K. Matta, CA
Revenue by : Sh. S. K. Jain, Sr. DR

Date of Hearing : 01.09.2016		Date of Pronouncement : 28.10.2016

ORDER

This is an appeal by the assessee against the order dated 28.11.2014 of ld. CIT(A)-1, Gurgaon.

2. The only grievance of the assessee in this appeal relates to the confirmation of addition of Rs.72,740/- made by the AO.

3. Facts of the case in brief are that the assessee is condominium, a Resident Welfare Association formed for its members and being governed by its bye-laws, accordingly managed by one group of persons to handle day to day activities of the condominium. The activities of the association includes, housekeeping, security and to provide repair and maintenance, 24 hours power supply on the reimbursement

basis to its members. For these services the apartment owners were being charged on quarterly basis. The assessee filed the return of income on 28.09.2010 declaring an income of Rs.13,31,930/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Later on, the case was selected for scrutiny. During the course of assessment proceedings, the AO observed that the assessee is receiving maintenance charges from resident members and as members were having profit motive by giving the houses on rent instead of their own residential purposes, therefore, the mutuality concept of the society was not valid. The AO accordingly considered the receipts of maintenance charges in the hands of the assessee society as taxable.

4. Being aggrieved the assessee carried the matter to the ld. CIT(A) who sustained the addition of Rs.72,420/- by observing in para 3.10 of the impugned order as under:

> *"3.10 After considering the facts of the case together with the decision of Ld. CIT(A) in appellant's appeal for the assessment year 2008-09, I hold that the surplus generated after meeting the common expenses incurred on behalf of non-members will be subject to tax. As per the calculation sheet given by the learned counsel, while the total contribution from members was Rs,l,07,66,859/-, the surplus of income over expenditure transferred to members was Rs.15,50,500/-. This implies that 14.40% of the total*

contribution was transferred to the members account by way of surplus, This surplus represents the excess of income over expenditure incurred by the society. Applying the same percentage to the gross receipts from tenants, the amount of surplus comes to Rs.72,420/-. Hence, the addition of the AO is confirmed only to the extent to Rs.72,420/-. Accordingly Ground Nos. 1 and 2 of the appeal are partly allowed."

5. Now the assessee is in appeal. During the course of hearing the ld. Counsel for the assessee at the very outset stated that this issue is squarely covered in favour of the assessee vide decision dated 01.03.2016 in ITA No. 1775/Del/2013 for the assessment year 2008-09 in assesseeøs own case (copy of the said order was furnished).

6. The ld. DR in his rival submissions strongly supported the orders of the authorities below.

7. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that an identical issue having similar facts has already been adjudicated by the ITAT Delhi Bench ÷Aø, New Delhi in ITA No. 1775/Del/2013 for the assessment year 2008-09 in assesseeøs own case wherein vide order dated 01.03.2016, the relevant findings have been given in paras 4 & 5 which read as under:

"4. We have considered the submissions of both the parties and have perused the record of the case. The short point for consideration is whether the contributions received from tenants would come within the ambit of concept mutuality or not. The tenants occupy the premises and, therefore, for all practical purposes entered into the shoes of the owner/ member of society. The total number of members in the society were 58 out of which only 7 members had let out their flats. The concept of mutuality required that the contributor and beneficiary should be identified. In the present case the beneficiary is identified as the flat occupants/ owners as long as it will occupy the flat in the condominium. As long as the tenant occupy the flat in the condominium, he is the beneficiary of the common maintenance charges. In this regard ld. counsel has referred to following bye-laws:

> *"(b) The provisions of these bye-laws apply to the Beverly Park-1 condominium including all present or future owners, tenants, future tenants or their employees and/ or any other persons that might use the facilities of the building in any manner are subject to the regulations set forth in these byelaws.*
>
> *The mere acquisition or rental or taking license of any of the family units (hereinafter referred to as "units") of the building or occupancy of any of the said units will signify that these bye-laws are accepted, ratified and will be complied with.*

5. This clearly shows that these bye-laws of the condominium were applicable to tenants also. In view of above discussion, the appeal of the assessee is

allowed and the addition of Rs. 247388/- upheld by the CIT(A) is deleted."

8. Since, the facts for the year under consideration are identical to the facts involved in the assessment year 2008-09. So, respectfully following the aforesaid referred to order dated 01.03.2016, this issue is decided in favour of the assessee.

9. In the result, appeal of the assessee is allowed.

(Order Pronounced in the Court on 28/10/2016)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 28/10/2016
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR