IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri S. S. Viswanethra Ravi, JM]

I.T.A No. 314/Kol/2016
Assessment Year: 2009-10

Amardeep Cooperative Housing Society Ltd. (PAN: AACCA5693A)	Vs. Income-tax Officer, Wd-12(3), Kolkata
(Appellant)	(Respondent)

Date of hearing: 01.12.2016
Date of pronouncement: 09.12.2016

For the Appellant: Shri S. K. Tulsiyan, Advocate
For the Respondent: Shri Sallong Yaden, Addl. CIT

ORDER

Per Shri M. Balaganesh, AM:

This appeal by assessee is arising out of order of CIT(A)-7, Kolkata vide Appeal No. 721/CIT(A)-7/Kol/W-12(3)/2014-15 dated 17.12.2015. Assessment was framed by ITO, Ward-12(3), Kolkata u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the "Act") for AY 2009-10 vide his order dated 29.09.2011.

2. The first issue to be decided in this appeal is as to whether the ld CITA is justified in upholding the addition made on account of interest accrued on Fixed Deposits on accrual basis as against the cash system of accounting followed by the assessee in the facts and circumstances of the case.

2.1. The brief facts of this issue is that the assessee had filed its return of income on 30.3.2010 for the Asst Year 2009-10 declaring loss of Rs. 4,95,199/- (business loss claimed Rs 6,42,613/-) which was processed u/s 143(1) of the Act on 4.3.2011. The case was selected for scrutiny by issuance of notice u/s 143(2) of the Act on 24.8.2010 which was duly served on the assessee. The assessee is a residential housing society providing service to the flat owners of the building located at the said premises. The assessee has shown house property income out of receipt of license fees and servant quarter rent. The ld AO observed that in the Tax Audit Report, the Tax Auditor had stated the method of accounting followed by the assessee to be Mercantile except in respect of Interest on FD which is accounted on receipt basis. The ld AO observed that in the submission dated 5.8.2011 , the

assessee had stated that the electricity charges were accounted for on receipt basis. The ld AO observed that huge sum was accounted at the end of the year under the head 'Outstanding Liabilities' . The ld AO issued show cause notice to the assessee as to why the interest accrued on fixed deposits should not be taxed on accrual basis at Rs. 1,22,400/- as against the sum of Rs. 8,933/- declared on receipt basis. The assessee replied that the assessee has been declaring interest income on fixed deposits regularly on receipt basis and also stated that in any case the said interest income on fixed deposits would not be subjected to tax on the principle of mutuality. The ld AO observed that investment of surplus fund with some of the banks and other institutions in the form of fixed deposits and securities which in turn result in earning of huge surplus amounts by way of interest cannot be held to satisfy the mutuality concept placing reliance on the decision of the Hon'ble Karnataka High Court in the case of CIT vs ITI Employees Death and Superannuation Relief Fund reported in (1998) 234 ITR 308 (Kar). Accordingly the ld AO treated the sum of Rs.1,22,400/- being the interest income on fixed deposits on accrual basis and brought the difference of Rs. 1,13,467/- (1,22,400-8,933) to tax.

2.2. Before the ld CITA, the assessee argued that interest on fixed deposits accrue from year to year and are paid along with the proceeds on maturity and the deposits matured in the subsequent financial year when majority of interest together with redemption proceeds were received by the assessee. The interest element thereon was credited to the profit and loss account and offered to tax in Financial Year 2009-10 relevant to Asst Year 2010-11. The ld CITA observed that the assessee is following mercantile system of accounting and from the perusal of the balance sheet, the assessee was having fixed deposits amounting to Rs. 14.58 lakhs with bank and offered a meager interest amount of Rs. 8,933/- on receipt basis. There is no scope for the assessee to postpone the recognition of income to the date of maturity when it is following mercantile system of accounting. Accordingly he upheld the addition of the ld AO in this regard. Aggrieved, the assessee is in appeal before us on the following ground :-

> *"1. That the Ld. CIT(A) erred in confirming addition of interest to the tune of Rs.1,13,468/- made by the AO, not appreciating the fact that interest on the fixed deposits was accounted for on cash basis and accordingly was offered to tax in the year of redemption of Fixed deposit i.e. FY 2009-10, thereby leading to double taxation of interest once in FY 2008-09 and again in FY 2009-10."*

2.3. The ld AR reiterated the arguments made before the lower authorities and furnished the ledger account of fixed deposits together with interest received thereon for the financial

years 2008-09 and 2009-10 and certificate of interest from Indian Bank Sarat Bose Road for the financial year 2008-09 and stated that the assessee had duly offered the interest income based on the certificate of interest provided by the bank and hence there is no need to make any separate addition in the sum of Rs. 1,13,467/-. He placed reliance on the relevant documents in support of his argument which were enclosed vide pages 1 to 9 of his paper book. In response to this, the ld DR vehemently relied on the orders of the lower authorities.

2.4. We have heard the rival submissions. We have also gone through the paper book filed by the assessee in this regard. We find from the certificate of interest provided by the Indian Bank Sarat Bose Road Branch, that the assessee had earned interest income of Rs. 8,933/- on its fixed deposits during the financial year 2008-09 relevant to Asst Year 2009-10 and the same has been offered to tax. Hence we hold that there is no need to make any addition towards interest on fixed deposits on an estimated basis. Accordingly, the Ground No. 1 raised by the assessee is allowed.

3. The last issue to be decided in this appeal is as to whether the ld CITA is justified in upholding the disallowance of expenses to the tune of Rs. 2,87,857/- in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the assessee was in receipt of license fees of Rs. 1,96,630/- from M/s Spice Cell and Service quarter rent of Rs. 1,200/- which was sought to be taxed by the ld AO as income from house property after granting relief of 30% towards standard deduction thereon. Apart from that, the ld AO sought to treat the value of sale of old lift amounting to Rs. 1,45,011/- ; common service charges received from M/s Spice Cell of Rs. 4,26,025/- ; Generator facility charges from M/s Spice Cell of Rs. 1,88,710/- and difference in income received from M/s Spice Cell between what is reflected by the assessee and what is reflected in Form 16A issued by M/s Spice Cell amounting to Rs. 41,520/- and determined the total income of the assessee accordingly in addition to taxing the interest income on fixed deposits of Rs. 1,22,400/- on estimate basis.

3.2. In respect of addition towards sale of old lift of Rs. 1,45,011/-, the ld CITA held that the lift constitutes block of assets and sale value of old lift should be reduced from the block

of assets and balance if any should be brought to tax in accordance with the provisions of section 50 of the Act and directed the ld AO accordingly.

3.3. The assessee stated that M/s Spice Cell had set up a telecom tower on the roof of the building and was also utilizing all the common services and infrastructure of the housing society available to the flat owners. For this, it paid license fees of Rs. 1,96,630/-, common service charges of Rs. 4,26,025/- and Generator facility charges of Rs. 1,96,630/- . The same was brought to tax by the ld AO as the principle of mutuality was not applicable to the said receipts as the same were received from non-member. The assessee pleaded that reasonable allowance should be made for the expenses attributable to the earning of such receipts while computing the income of the assessee. The ld CITA observed that M/s Spice Cell is not a member of Flat Owners Association. The assessee claimed 30% of generator maintenance expenses ; Rs. 23,760/- for maintenance expenses, 33% for depreciation on lift ; 30% of salary and wages as expenses in its written submission. Since none appeared on behalf of the assessee and copy of agreement for the receipts of generator maintenance and copy of agreement for common service charges from Spice Cell were not furnished before the ld CITA, the ld CITA observed that lift and generator were used by both the flat owners as well as by Spice Cell and accordingly estimated the allowability of expenses as below :-

For Common Service Charges – Allowed 25% of Rs. 4,26,025/-
For Generator Facility Charges – Allowed 25% of Rs. 1,96,630/-

Accordingly, he granted relief of Rs. 1,55,663/- including the relief granted already by the ld AO in the assessment. Aggrieved, the assessee is in appeal before us on the following ground :-

"2. That on the facts and circumstances of the case, the Ld. CIT(A) erred in not allowing expenses to the tune of Rs.2,87,857/- attributed to the provision of services to M/s. Spice Cell, receipts from which was fully taxed."

3.4. The ld AR reiterated the arguments made before the ld CITA and enclosed the basis of allocation of expenses and the claim of the assessee on proportionate basis together with the copy of the agreements between the assessee and M/s Spice Cell vide pages 10 to 18 of Paper Book. He prayed for acceptance of the calculation made by the assessee which is very reasonable. In response to this, the ld DR vehemently relied on the order of the ld CITA.

3.5. We have heard the rival submissions. We have gone through the copy of the workings for allocation of reasonable expenses and copy of agreement with M/s Spice Cell as enclosed in pages 10 to 18 of the Paper Book filed by the assessee. The facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. It is not in dispute that the lift , generator and other common service facilities that are available in the residential apartment were utilized by both Spice Cell as well by the flat owners and hence the reasonable allocation of expenses need to be done for computing net income thereon. From the basis of allocation of expenses, we find that the assessee had taken into account each and every common expenses and had made a fair allocation thereon and accordingly direct the ld AO to accept the basis of allocation of expenses as made by the assessee and recomput the total income accordingly. Hence the Ground No. 2 raised by the assessee is allowed.

4. The Ground Nos. 3 & 4 raised by the assessee are general in nature and does not require any adjudication.

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

Order is pronounced in the open court on 09.12.2016

Sd/-	Sd/-
(S.S. Viswanethra Ravi)	(M. Balaganesh)
Judicial Member	Accountant Member

Dated : 9th December, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant M/s. Amardeep Cooperative Housing Society Ltd., 1, Sarat Bose Road, Kolkata-700 020.
2. Respondent –ITO, Ward-12(3), Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy, By order,

Asstt. Registrar.