

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH 'A-SMC', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER**

ITA No. 2013/Hyd/2018  
Assessment Year: 2015-16

Windsor Home Owners vs. Income-tax Officer,  
Welfare Association, Ward – 1, Vikarabad.  
Hyderabad.

PAN – AAAAW 4867G

Appellant

Respondent

Assessee by: Shri M.V. Anil Kumar  
Revenue by: Smt. Esther N. Hongal

Date of hearing: 06/06/2019  
Date of pronouncement: 21/06/2019

**ORDER**

This is an appeal of the assessee for AY 2016-17 against the order of CIT(A) – 6, Hyderabad dated 19/07/2018.

2. Brief facts of the case are that assessee is a society formed by the organisation of members of a residential block, for the welfare of its members like common maintenance etc. It filed its return of income for the AY 2015-16 on 14/08/2015 declaring income of Rs. 5,74,760/-. During the assessment proceedings u/s 143(3) of the Act, AO observed that assessee has earned interest income from SB A/c and term deposits and that the assessee has claimed payments made towards various expenses incurred for the maintenance of the colony including security, gardening, maintenance, etc. as deductions from the said receipts and has admitted an amount of Rs. 5,74,748/- as income from other sources for the AY 2015-16. AR of the assessee explained that principles of mutuality were applicable to the assessee. AO, therefore, asked the assessee

to show cause as to why deduction claimed should not be disallowed by applying the provisions of section 40(a)(ia) rws 28(iii) of the Act. Assessee replied that the society is a mutual benefit society and therefore entire surplus is exempt from income-tax and the principles of mutuality are applicable in its case. AO, however, relied upon the decision of the Hon'ble Supreme Court in the case of Bangalore Club Vs. CIT wherein it was held that interest earned from surplus funds placed as deposits with commercial banks are not exempt from tax liability on the concept of mutuality. He, therefore, treated the interest income earned on the term deposits as income from other sources and did not allow the expenses claimed therefrom. Thus, the total income of the assessee was determined at Rs 9,99,670/-.

3. Aggrieved, the assessee filed an appeal before the CIT(A), who confirmed the order of AO and the assessee is in second appeal before us raising the following grounds of appeal:

*"1. Your Appellant submits that the CIT(A) as well as the Assessing Officer having granted the exemption on the principals of mutuality on contributions received, ought to have granted the exemption on interest receipts, as this income arises from the contributions from Members.*

*2. Your Appellant submits that the CIT(A) has not applied the ratio of the Hon'ble Supreme Court in the case Chelmsford Club Vs CIT 243 ITR 89 (SC) and CIT Vs Bankipur Club 92 Taxman 278 (SC) by virtue of which the receipts from non-members if any is also exempt from tax on the principals of mutuality.*

*3. Without prejudice to the above, your Appellant submits that as an alternative that at best the net surplus only may be taxed and not the entire interest receipts from the banks.*

*4. Your Appellant submits that the exemption is in respect of income and not loss, therefore the loss from*

*one source has to be set off against another source with in the same head of income or different head of income in the same year as per section 70 and 72 of the Income Tax Act, 1961.”*

4. Ld. counsel for the assessee reiterated the submissions made before the revenue authorities, while, Id. DR supported the orders of revenue authorities.

5. Having regard to the rival submissions, I find that the bye-laws of society provided for maintenance of sinking fund @ 15,000 per flat and further that the sinking fund is to be kept in the bank as fixed deposits and interest there from also is to be added to sinking fund and shall not be transferred to general reserve or towards expenses except to the extent required and limited to the amount of interest accumulated and ploughed back to the sinking fund. It also provided that the surplus from reserve and repair and maintenance funds may be invested in fixed deposit in banks, post office and debit bonds. Ld. counsel for the assessee has drawn my attention to the P&L A/c and the capital account, wherein corpus fund is shown at Rs. 1.03 crores and the deposits into the bank account is also to the extent of Rs. 1,06,73,475/- which included the net profit of Rs. 3,79,391/-, and reserves & surplus at Rs. 6,024/-. It is seen that corpus funds have been deposited into the bank account and the interest earned thereon is to the extent of Rs. 9,71,127/-. These funds are contributed by the members of society for meeting their own expenses and interest earned on deposit of such funds also attain the character of the corpus fund and therefore, principles of mutuality would apply and the interest income cannot be brought to tax.

5.1 As regards the setting off of the maintenance expenditure from the interest income is concerned, Id. counsel for the assessee stated that since maintenance amount collected by the society was not sufficient, interest income has been utilized for maintenance. From the P&L A/c, it is seen that maintenance charges collected during the year are Rs. 29,29,667/- as against the total expenses of Rs. 39,21,335/- including net profit of Rs. 3,79,391/-. Thus, it can be seen that the expenditure is more than maintenance charges collected by the assessee society and the interest on term deposits had to be utilized for meeting the maintenance expenditure, where the general body of the society allowed utilisation of interest on sinking funds for maintenance on the basis of requirement under the bye-law. Since principles of mutuality is applicable, both income and expenditure has to be allowed to be set off against each other. Therefore, the grounds raised by the assessee are allowed.

6. In the result, appeal of the assessee is allowed.  
Pronounced in the open court on 21<sup>st</sup> June, 2019.

Sd/-  
((P. MADHAVI DEVI)  
JUDICIAL MEMBER

Hyderabad, dated 21<sup>st</sup> June, 2019.

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Copy forwarded to:

1. *Windsor Home Owners Welfare Association, C/o Beldi & Associates, CAs, 6-3-609/195, Anand Nagar, Khairatabad, Hyderabad – 500 004.*
2. *ITO, Ward – 1, Vikarabad*
3. *CIT(A) - 6, Hyderabad*
4. *Pr. CIT - 2, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*