

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM  
AND SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.262/PUN/2020  
निर्धारण वर्ष / Assessment Year : 2016-17

Hyde Park (A) Cooperative Housing  
Society Limited,  
Society Office Hyde Park (A)  
Cooperative Housing Society Ltd.,  
Market Yard Road, Market Yard,  
Pune-411037.

PAN : AAAJH0371F

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-5(4),  
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket M. Joshi  
Shri Sudeep Chhallani  
Revenue by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 16.08.2021

घोषणा की तारीख / Date of Pronouncement : 17.08.2021

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of the Learned Commissioner of Income Tax (Appeals)- 4, Pune ('CIT(A)' for short) dated 24.09.2019 for the assessment year 2016-17.

2. Briefly, the facts of the case are as under :-

The appellant is a cooperative society formed under the Maharashtra Cooperative Societies Act, 1960. It is formed with the object of maintaining the housing society. The return of income for the assessment year 2016-17 was filed on 07.09.2016 declaring total income of Rs.Nil. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward- 5(4), Pune ('the Assessing Officer') vide order dated 22.12.2018 passed

u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.90,18,680/-. While doing so, the Assessing Officer brought to tax on the interest received from banks of Rs.89,36,353/- and interest on income tax refund of Rs.82,328/- rejecting the contention of the appellant that the same cannot be taxed on the principle of mutuality.

3. Being aggrieved by the above additions, an appeal was filed before the Id. CIT(A) contending *inter-alia* that the interest income cannot be brought to tax on the principle of mutuality and also claiming that the expenditure incurred on the maintenance of housing society should be set off against the interest income earned. It was also claimed before the Id. CIT(A) that the interest income earned from cooperative society to the extent of Rs.12,44,686/- should be exempt under the provisions of section 80P(2)(d) of the Act. The Id. CIT(A) had rejected the contention that the income should be exempt on the principle of mutuality placing reliance on the decision of Hon'ble Apex Court in the case of Bangalore Club vs. CIT, 350 ITR 509 (SC). However, he had not adverted to the alternative contention of the appellant. As regards to the claim for deduction u/s 80P(2)(d) of the Act, the Id. CIT(A) had directed the Assessing Officer to allow the same after due verification in the light of the following decisions :-

- (i) *Land and Co-operative Housing Society Ltd. vs. ITO, 46 CCH 50 (Mum.);*
- (ii) *State Bank of India vs. CIT, 389 ITR 578 (Guj.)*
- (iii) *PCIT vs. Totagar's Co-operative Sale Society Ltd., 392 ITR 74; and,*
- (iv) *Shree Mahadeshwar Sahakari vs. ITO, ITA No.374/Mum/2018.*

4. Being aggrieved by the above order of the Id. CIT(A), the appellant is before us in the present appeal.

5. During the course of hearing before us, the grounds of appeal relating to the applicability of the principle of mutuality was given up. However, he

pressed the following additional grounds of appeal, which we have taken for adjudication :-

*“1] The learned CIT(A) erred in not allowing the deduction in respect of society maintenance expenses to the extent of Rs.89,36,353/- against the interest of Rs.89,36,353/- earned on FDRs made with banks out of one time maintenance deposits received from members at the time of formation of housing co-operative society without appreciating that the said deduction was allowable on facts and in law.*

*2] The learned CIT(A) ought to have appreciated that the entire interest income of Rs.89,36,353/- received on FDRs placed with banks out of one time maintenance deposits received from members was duly utilized for incurring maintenance expenses of the housing co-operative society and hence, no addition towards the said interest income was warranted on the facts and in law.”*

6. It is urged that the expenditure incurred on maintenance of the housing society should be set off against the income earned in the form of interest of fixed deposits and income tax refund following the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Maruti Employees Cooperative House Building Society Ltd., 320 ITR 254 (P&H) and also placed reliance on the decisions of the Co-ordinate Bench of the Tribunal in the case of (i) M/s. Marvel Vivacity Condominium vs. ITO (ITA No.1373/PUN/2018 order dated 27.03.2019), (ii) Nivedita Garden Condominium vs. ITO (ITA No.1210/PUN/2019 order dated 07.10.2019), (iii) Maharashtra Police Mega City Co-operative Housing Society Ltd. vs. ITO (ITA No.1390/PUN/2019 order dated 21.01.2020).

7. On the other hand, ld. Sr. DR supported the order of the ld. CIT(A).

8. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to the set off of the expenditure incurred on the maintenance of housing society against the interest income earned on fixed deposits and income tax refund. The issue as to the applicability of principle of mutuality to the appellant society is not before us. The primary contention of the appellant society is that when the interest

earned on fixed deposits and income tax refund is treated as a part of the income of the appellant society, the expenditure incurred on the maintenance of the housing society should be set off against such interest income. We find merit in the submission made by the ld. AR for the assessee as the identical issue was decided by the Hon'ble Punjab & Haryana High Court in the case of Maruti Employees Cooperative House Building Society Ltd. (supra) by holding as under :-

*“5. A perusal of the order passed by the Income-tax Appellate Tribunal reveals that the Revenue did not dispute the fact that the respondent-assessee was accepting deposits from its members for maintenance of their houses. The aforesaid deposits were earning interest which constituted interest income of the respondent-assessee. Out of the interest income, the respondent-assessee was incurring expenses for the maintenance of the houses of the members who had made the said deposits. It was in the aforesaid view of the matter, that the Income-tax Appellate Tribunal accepted the claim of the respondent-assessee for deduction.*

.....

*8. The second contention advanced by the learned counsel for the appellant was that the issue of interest income could not be confused with the issue of expenses incurred on account of maintenance of houses and as such expenses on account of maintenance of houses could not in any case be deducted from out of the interest income by the respondent-assessee. We are afraid that it is not possible for us even to accept the instant submission advanced on behalf of the Revenue. As already noticed herein- above, interest was derived on deposits made by the members of the society requiring the respondent-assessee to discharge the liability of maintaining their houses. As a matter of executing the obligation for the deposits made, the respondent-assessee was incurring expenses. It is those very expenses for which deposits were made. The contractual obligation between the members of the society and the respondent-assessee came to be satisfied only after the deposits were accepted and the reciprocal maintenance arrangements were carried out through the expenses referred to hereinabove. As such, they must be treated as part and parcel of the contractual agreement between the members of the society and the respondent-assessee. Thus viewed, we are satisfied that the Income-tax Appellate Tribunal was fully justified in allowing deduction on account of expenses incurred towards maintenance of houses by the respondent-assessee. At this stage, it would also be necessary to notice that the Revenue is stated to have acknowledged the fact that expenses were incurred by the respondent-assessee towards maintenance in furtherance of the deposits made by the members of the society to the respondent-assessee. The aforesaid acknowledgment has not been disputed even during the course of hearing before us.*

*9. For the reasons recorded hereinabove, we find no merit in this appeal and the same is accordingly dismissed.”*

9. The ld. CIT(A) though recorded the submissions made on this behalf by the appellant society, had failed to advert to the same, and render a finding on this aspect. Though, there can be no dispute as to the proposition of set off of the expenditure incurred on the housing society against the interest

income, it is a factual aspect whether the expenditure claimed by the appellant society is incurred only and exclusively for the maintenance of housing society, requiring verification. There was no occasion to verify the same by the Assessing Officer as this claim was not made before the Assessing Officer. The ld. CIT(A) though recorded the submission of the assessee, no finding was rendered by him. Therefore, we remit the matter back to the file of the ld. CIT(A) to give a finding as to how much expenditure can be set off against the interest income earned after due verification. Accordingly, we remand the matter to the file of the ld. CIT(A). Needless to say, the ld. CIT(A) shall decide the issue after affording reasonable opportunity of being heard to the assessee. Thus, the additional grounds raised by the appellant are allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 17<sup>th</sup> day of August, 2021.

**Sd/-**

**(PARTHA SARATHI CHAUDHURY)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

**(INTURI RAMA RAO)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 17<sup>th</sup> August, 2021.

Sujeet

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.