

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

**Before Shri I.P. Bansal, Judicial Member
and Shri P.M.Jagtap, Accountant Member**

I.T.A. No. 6509//Mum/2011
Assessment Years : 2008-09.

The Income-tax Officer 12(3)(3),
Mumbai.

Vs.

CCI Chambers Co-op. Housing
Society Ltd.,
Ground Floor,
Dinshaw Wachha Marg,
Mumbai – 400 020.
PAN AAJJC006E

Appellant.

Respondent.

Appellant by : Shri Rajarshi Dwivedy.
Respondent by : Ms. Mrugakshi K. Joshi.

Date of hearing : 23-08-2012
Date of pronouncement : 29 -08-2012

ORDER

Per P.M. Jagtap, A.M. :

This appeal is preferred by the Revenue against the order of learned CIT(Appeals)-23, Mumbai dated 20-07-2011 and the solitary issue relating to taxability of transfer fees received by the assessee society from its member is raised by the Revenue by way of following grounds :

1. On the facts and in the circumstances of the case, the Id. CIT(A) erred in deleting the addition of Rs.46,00,000/- on account of transfer fees received by the assessee from two members without appreciating the

fact that the receipt of transfer fees in the guise of voluntarily contribution.

2. On the facts and in the circumstances of the case, the Id. CIT(A) erred in appreciating the fact that the assessee has violated the limitation of transfer fee amount of Rs.25,000/- fixed by the Notification of Govt. of Maharashtra, and the AO has rightly taxed the amount, as it was not covered under the principles of mutuality.
3. On the facts and in the circumstances of the case, the Id. CIT(A) failed to appreciate the facts the Revenue has challenged the decision of the Hon'ble Bombay High Court in the case of Mittal Court Premises Co-op Society Ltd. 320 ITR 414 (Bombay) on the identical issue by filing SLP and the issue is pending before the Hon'ble Supreme Court.

2. The assessee in the present case is a cooperative housing society. The return of income for the year under consideration was filed by it on 08-09-2008 declaring total income at Nil. During the course of assessment proceedings, it was noticed by the AO that the assessee society has received voluntary contributions of Rs.30 lakhs and Rs.16 lakhs from Shri Hresh Ashar and Shri Ravindra Gokal respectively towards building repairs and amenity fund. On further enquiry, the AO found that the said amounts received in the guise of voluntary contribution was actually transfer fees received by the assessee society on transfer of flats. As the said transfer fees received by the assessee was in violation of notification issued by the Government of Maharashtra restricting the amount of transfer fees per flat to Rs.25,000/-, the same was treated by the AO as income of the assessee society chargeable to tax. On appeal, the learned CIT(Appeals) deleted the said addition made by the AO relying on the decision of Hon'ble Bombay High Court in the case of Mittal Court Premises Cooperative Society Ltd. 320 ITR 414 wherein it was held that contributions to the common amenity/fund/repairs and welfare fund paid by new members is not taxable in the hands of cooperative housing society on the basis of principle of mutuality. He also relied on another decision of Hon'ble

Bombay High Court in the case of Sind Co-op. Housing Society 317 ITR47 wherein it was held that transfer fees received from incoming and outgoing members as voluntary contribution to the welfare fund is exempt on the basis of principle of mutuality Aggrieved by the order of the learned CIT(Appeals) giving relief to the assessee on this issue, the Revenue has preferred this appeal before the Tribunal.

3. We have heard the arguments of both the sides and also perused the relevant material on record. As agreed by the learned representatives of both the sides, the issue involved in this appeal of the Revenue is squarely covered in favour of the assessee by the decision of Hon'ble High court in the case of Mittal Court Premises Co-op Society Ltd. (supra) and Sind Co-op. Housing Society (supra) relied upon by the learned CIT(Appeals) in his impugned order. As further pointed out by the learned counsel for the assessee, the coordinate bench of this Tribunal in assessee's own case for assessment year 2005-06 has decided a similar issue in favour of the assessee by an order dated 14-10-2011 passed in ITA No. 2494/Mum/2010 following the said decision of Hon'ble jurisdictional High Court. The issue involved in this appeal of the Revenue thus is squarely covered in favour of the assessee by the decision of coordinate bench of this Tribunal in assessee's own case as well as by the decision of Hon'ble Jurisdictional High Court in the case of Mittal Court Premises Co-op Society Ltd. (supra) and Sind Co-op. Housing Society (supra). Respectfully following the said judicial pronouncements, we uphold the impugned order of the learned CIT(Appeals) deleting the addition of Rs.46,00,000/- made by the AO on account of transfer fees received by the assessee society from its two members and dismiss this appeal of the Revenue.

4. In the result, the appeal of the Revenue is dismissed.

Order pronounced on this 29th day of August, 2012.

Sd/-
(I.P.Bansal)
Judicial Member

Sd/-
(P.M. Jagtap)
Accountant Member

Mumbai,
Dated: 29th August, 2012.

Wakode

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, C-Bench.

(True copy)

By Order

Asstt. Registrar,
ITAT, Mumbai Benches, Mumbai.