

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "E", MUMBAI  
BEFORE SHRI P.M. JAGTAP (AM) & SHRI VIVEK VARMA (JM)**

**I.T.A. Nos.2646 & 2647/Mum/2010  
(A.Ys. 2004-05 & 2006-07)**

The Samarth Nagar Lokhanwal Complex CHS Association Ltd., Garden No.5 Lokhandwala Complex, Nr. Rishi Tower, Andheri (W), Mumbai-400 053. PAN: AAAT6732D.	Vs.	Income-tax Officer-20(3)(4), Mumbai.
Appellant		Respondent

Appellant by	Shri Jaleshwar Singh.
Respondent by	Shri Parthsarathi Naik.

Date of hearing	02-04-2012
Date of pronouncement	09-04-2012

**O R D E R**

**PER VIVEK VARMA, JM :**

Two appeals for assessment years 2004-05 and 2006-07 arise from the common order of CIT(A)-31, Mumbai, dated 25-01-2010.

2. The appeals were first dismissed by the ITAT on account of non-prosecution vide order dated 29-07-2011. This order was re-called and the appeals filed originally were restored. We are now ceased with the original appeals.

3. The facts of the case as per SOF filed by the assessee, are that the Appellant Association is a mutual organization registered under the Maharashtra Co-op. Housing Society Act, 1960, affiliated to the Mumbai District Co-op. Housing Federation Ltd., formed for the benefit of the members. The Appellant Association has collected life membership contribution from its members for creating the infrastructure such as acquiring fixed assets by way of constructing building, acquiring club equipment and other facilities for the exclusive use of the members. As per approved bye laws of the Association, the fund collected as aforesaid may be kept in banks as short term investments in form of FDRs etc. until used for the specified purposes. During the previous year relevant to assessment year 2004-05, the appellant has received interest from banks on FDRs etc. to the tune of Rs.18,03,588/-. The aforesaid Bank interest of Rs.18,03,588/- was claimed to have been expected under the principle of Mutuality by the Association while filing the return of income. The Bank interest so earned on the deposits may be used for meeting regular expenses such as salaries to employees and other legal and administrative expenses during the period when the Association does not become fully operational of its infrastructures and start getting inflows to meet its regular expenses (extracted partly).

4. The AO further observed, that the assessee has credited its profit and loss account by a sum of Rs.18,03,588/- for the assessment year 2004-05 and Rs.6,69,724/- for the assessment year 2005-06, being interest on saving bank account and FDR, received from various banks during the relevant assessment years. On further verification of the details filed in this regard by

the appellant, the AO has observed that the said interest received is from SBI, Indian Bank, HDFC Bank Ltd. and ICICI Bank Ltd. as discussed in para 4.1 of the assessment order. Accordingly, in view of these facts, the assessee was asked to show cause as to why the interest received may not be considered separately since the entire interest received is from other than Co-op. Societies. In response, the appellant has submitted that it is a mutual association registered under Maharashtra Co-op. Housing Societies Act, 1960, affiliated to the Mumbai District Co-op. Housing Federation Ltd. The Association collects life membership contribution for creating the infrastructure such as acquiring specified assets in form of constructing building, acquiring club equipments and other facilities. As per approved bye-laws of the Association, the fund so collected may be kept in banks till such time it is used for the specified purpose in form of short term investment in fixed deposits. The bank interest so earned on deposit is again being used for meeting the regular expenses such as salary to the employees and other regular administrative and legal expenses.

According to the AO, the assessee being a Co-op. Society, the gross total income includes any income referred to in sec. 80P(2), there shall be a deduction in accordance with and subject to the provisions of the section. It is further observed that the deduction allowable as per the provisions of sec. 80P(2)(d) of the Act is only in respect to interest received from any other Co-op. Society. Since the entire interest is received from the banks, which are not Co-op. Societies, the appellant is not eligible for deduction as per clause

(d) to sub-section (2) to section 80P of the Act. Therefore, the entire interest income received by the assessee was added back to its total income.

Not satisfied, the assessee preferred appeal before the CIT(A).

5. In appeal before the CIT(A), the assessee, submitted that as per its bye-laws the assessee society is authorized to receive from its members membership fee, subscriptions, donation etc. as per its requirements. The amount so received including the life membership fees is kept in the FDR with various banks till its intended application. Interest is earned against such FDR. Therefore, according to the AR, the interest earned on such FDR should have been treated by the AO to be covered under the principles of mutuality. In this regard, it was further submitted that mutuality principle will have its application if there is identity of interest as between the contributors and beneficiaries. In this regard, the assessee has relied on the decision of Hon'ble Apex Court in the case of CIT v/s. Bankipur Club Ltd. reported in 226 ITR 97 in which it was held that so long the income is from an activity not connected with commerciality, the concept of mutuality will apply provided there is identity of interest as between the contributors and the beneficiaries. Besides, the above, assessee has also relied on the decision of Patna High Court in the case of CIT v/s. Ranchi Club Ltd. reported in 196 ITR 137 in which it was held that ***“merely because the assessee company had entered into transactions with non-members and earned profit out of the transaction held with them, its right to claim exemption on the principle of mutuality in respect of transaction held by it with its***

**members was not lost.** He has further relied on the decision of Hon'ble Supreme Court in the case of CIT v/s. Cawnpore Club Ltd. reported in 140 Taxman 378, in which, according to the assessee, it was held that income from interest from deposit and rent from rooms let out to the guests was held to be governed by the principle of mutuality. The assessee further submitted that after the decision of Supreme Court, there need not be any controversy with regard to the receipts from minimal activities with non-members and in case of bank interest from deposits, if there is no taints of commerciality, mere deposit of surplus funds with a bank for custody should not attract the tax. According to the assessee, the mutuality principle offers a tax shelter as long as it's character of mutual association is retained, with its income not tainted by commerciality. The CIT(A), not convinced with the arguments made before him, rejected the same and upheld the view of the AO and sustained the addition.

6. The assessee being aggrieved by the decision is before the ITAT.

7. Before us, the AR appearing for the assessee pointed out that the case now is fully covered by the decision of the Co-ordinate Bench in ITA No.6223/Mum/2009 in the case of ITO v/s. Hill Properties Ltd. wherein Hon'ble Mumbai Bench has accepted the principles of mutuality. In this case also, the funds were parked with bank, ICICI Bonds, BEST deposits, as in the present case, where the funds had been kept as deposits with various banks. The Hon'ble Bench in this case held, "that the principle of mutuality is applicable to the assessee even though it is an incorporated company". The

AR pointed out that in this case itself, the Hon'ble Co-ordinate Bench had relied on the case of Bombay Gymkhana Ltd. in ITA No.7674/Mum/2007, dated 20-04-2009, wherein it was held that interest earned by the mutual association from banks, bonds, etc. on the surplus funds is not liable to tax. The Hon'ble ITAT in that case, also relied on the decisions of Hon'ble Delhi High Court in DIT (Exemption) v/s. Oriental Bank of Commerce Welfare Society reported in (2003) 130 Taxman 575 and the case of Karnataka High Court in the case of Canara Bank Jubilee Staff Welfare Fund v/s. DCIT, reported in (2008) 222 CTR 286 and allowed the assessee's appeal. The AR thus prayed that the issue now is fully covered.

8. The DR strongly defended the case of the Revenue authorities to not to allow the concept of mutuality and sustain the addition made. In the alternative, the DR pleaded that the assessee should not be allowed the benefit of claiming deduction u/s. 80P.

9. We have heard the arguments and we are of the view that the principle of mutuality is fully applicable and the interest earned on the fixed deposits with the bank and other institutions is fully covered within the parameters of mutuality. We fully endorse the view taken by CIT(A) in the case of Hill Properties Ltd. ITA No. 6223, 6249/Mum/09, that the principle of mutuality cannot be destroyed simply because the funds were not parked with members but with third parties who are not members of the Society.

10. We, therefore, hold that the principle of mutuality is fully applicable and by respectfully following the various decisions relied upon by the assessee and by the Hon'ble coordinate Bench in the case of Hill Properties Ltd., we allow the appeals for both the years.

11. In the result, the assessee's appeals are allowed.

Order pronounced on the 09th day of April, 2012.

**Sd/-**

**(P.M. JAGTAP)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(VIVEK VARMA)**  
**JUDICIAL MEMBER**

Mumbai: 09th April, 2012.

NG:

Copy to :

1. Assessee.
  2. Departemt.
  - 3 CIT(A)-31,Mumbai.
  - 4 CIT-XI,Mumbai.
  - 5.DR,"E" Bench, Mumbai.
  - 6.Master file.
- (TRUE COPY)

BY ORDER,

Asst.Registrar, ITAT, Mumbai.

	Details	Date	Initials	Designation
1.	Draft dictated on	03-04-12		Sr.PS/
2.	Draft Placed before author	04-04-12		Sr.PS/
3.	Draft proposed & placed before the Second Member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/
6.	Kept for pronouncement on			Sr.PS/
7.	File sent to the Bench Clerk			Sr.PS/
8.	Date on which the file goes to the Head clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of order			