

पआयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
“SMC” BENCH, AHMEDABAD

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA Nos.12/AHD/2019& 1503/AHD/2019
Assessment Years: 2015-16 to 2016-17

Dhananjay Satellite Members Association, Dhananjay Tower, B/H Shyamal Row- House-3, Near Jain Derasar, Satellite, Ahmedabad-380015. PAN : AAAD2703N	Vs	The ITO, Ward-3(3)(9), Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shri A. P. Nanavaty, AR
Revenue by :	Shri R. R. Makwana, Sr. DR

सुनवाईकीतारीख/**Date of Hearing** : **18/04/2022**
घोषणाकीतारीख/**Date of Pronouncement**: **P22/04/2022**

आदेश/O R D E R

PERDR. A. L. SAINI, ACCOUNTANT MEMBER

Captioned two appeals filed by the assessee, pertaining to the Assessment Years (AY) 2015-16 and 2016-17, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals)-3, Ahmedabad [in short “ld. CIT(A)”], which in turn arise out of separate assessment orders passed by the Assessing officer under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the ‘Act’].

2. Since, the issues involved in these two appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts

narrated in ITA No.12/Ahd/2019, for assessment Year 2015-16, have been taken into consideration for deciding these two appeals *en masse*.

3. The assessee has raised multiple grounds of appeal. However, at the time of hearing we have carefully perused all the grounds raised by the Assessee. We find that most of the grounds raised by the Assessee, are either academic in nature or contentious in nature. However, to meet the end of justice, we confine ourselves to the core of the controversy and main grievances of the Assessee. The main grievance of the assessee is that learned CIT(A) has erred in facts and in law in disallowing expenditure claimed u/s 57(iii) of the Income Tax Act, 1961, against interest on fixed deposits being assessed under income from other sources. The assessee has incurred expenses based on mutual concept and said expenses has indirect nexus and are for maintaining and preserving the source as well as assets of the assessee society/Association.

4. The relevant material facts, as culled out from the material on record, are as follows. The assessee before us is a non-trading association. During the scrutiny proceedings, the assessing officer observed that assessee had earned interest income of Rs.6,29,914/- which comprises of interest of Rs.4,35,837/- and Rs.1,46,183/- from fixed deposit with Canara Bank and Vijaya Bank respectively. The assessee also earned Savings Bank Interest to the tune of Rs.47,894/-. The assessing officer noted that interest income earned on Fixed Deposits with Canara Bank and Vijaya Bank and saving bank interest income were in the nature of income from other sources and the assessee has shown the same as income in the computation of income filed alongwith the return of income. Further, assessing officer noted that assessee had claimed various expenses against these interest income and contribution/charges received from Members. The assessee had claimed expenses incurred on account of salary, security expenses, electricity expenses, repair and maintenance etc. The assessing officer was of the view that interest income earned by the assessee is shown under the head income from Other Sources u/s 56 of the Act, and against this income, as per the provisions of section 57 of the Act,

deduction of only those expenses are allowable which are directly linked to the earning of the said income. Therefore, assessing officer issued a show cause notice to the assessee to explain as to why a sum of Rs.6,29,914/- claimed as deduction u/s 57 should not be disallowed.

5. In response, the assessee furnished its reply, vide letter dated 15.12.2017. However, assessing officer rejected the contention of the assessee and held that concept of mutuality principal is absent from interest income earned on fixed deposit, therefore expenses to the extent of Rs.6,29,214/- was disallowed and added to the total income of the assessee.

6. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Learned CIT(A), who has confirmed the addition made by the Assessing officer. Aggrieved by the order of the Id. CIT(A), the assessee is in further appeal before us.

7. Shri A. P. Nanavaty, Learned Counsel for the assessee, pleads that assessee is a non-trading association and running its activities on mutuality concept. The assessee-association receives the contribution from its members. The unutilized contribution is parked in fixed deposits in bank accounts and earns interest income. The said interest income is also applied for various expenses for attainment of its objectives. The members of this association do not take any personal benefit from the interest income and other funds of the association. Therefore, whatever income earned by the association, is being applied for its objectives, hence association is working on mutuality concept, therefore addition made by the assessing officer may be deleted.

8. On the other hand, learned DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that assessee is registered as a non-trading organization, and the registration certificate is placed at page nos. 1, 2 and 3 of the assessee's paper book. The assessee submitted before us, memorandum of association of the trust, which is placed at page no.4 to 20 of the paper book, wherein we find that objectives of the association are to look after the member's common property and to organize social and cultural activities. The Learned Counsel for the assessee submitted before us, Income and Expenditure Account, Balance Sheet along with schedules, of the association for assessment years 2015-16 and 2017-18. We have gone through the Profit and Loss Account and Balance Sheet submitted by the Ld. Counsel and noticed that assessee has sources of income by various ways like, maintenance, contribution from members, interest on Fixed Deposits, Interest on savings bank account, Rental income, lift charges etc. These incomes are being utilized for the purpose of common welfare of the association and as per the objectives of the association for payment of water expenses, consultancy fee, repairs and maintenance, generator repairs, foundation expenses, general meeting expenses, telephone expenses, security expenses, salary expenses, printing and stationary expenses. Therefore, all these expenses are done by the assessee- association out of its income, as per the objectives mentioned in the memorandum of association. Nobody is taking personal benefit out of association income. Therefore, based on this factual position, we note that assessee-association is a non-trading in nature and running on mutual concept.

10. We note that assessing officer has misinterpreted the facts of the assessee-association. It is settled principle of law that no man can make a profit out of himself. We observe that assessee- association did not claim any expenditure for earning interest income from fixed deposits and saving bank account rather the assessee-association applied its interest income for the purposes which were mentioned in object clause of its Memorandum of Association. Thus, the assessee

has utilized the interest income for payment of water expenses, repairs, maintenance, salary and telephone expenses etc. Therefore, we note that interest income received by assessee-association, were utilized for various expenses, which were within the objectives of the assessee. We note that since it is a non-trading association and running on mutual concept, hence assessee is entitled to claim the expenses against the interest income, therefore based on the facts and circumstances, as narrated above, we delete the addition for both the assessment years.

11. In the result, both the appeals filed by the assessee (ITA No. 12/Ahd/2019 and 1503/Ahd/2019) are allowed.

Order pronounced in the Court on 22nd April, 2022 at Ahmedabad.

Sd/-
(T. R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd-
(Dr. A. L. SAINI)
ACCOUNTNAT MEMBER

Ahmedabad, dated 22/04/2022

SAMANTA

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
- s2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

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आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad