IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH 'D' BENCH

BEFORE SHRI B.R.MITTAL(JUDICIAL MEMBER) AND SHRI RAJENDRA SINGH (ACCOUNTANT MEMBER)

ITA No. 4410/Mum/2011
Assessment Year: 2005-06

I.T.O 16(1)(2), Matru Mandir, Mumbai.	Vs.	Darbhanga Mansion CHS Ltd., 12, M.L. Dahanukar Marg, Mumbai. PA No.AAAAD 0382 M
(Appellant)		(Respondent)

Appellant by : Shri C.G.K.Nair
Respondent by: Nishant Thakkar

Date of hearing: 4.4.2012
Date of pronouncement: 4. 4.2012

ORDER

Per B.R.Mittal, JM:

This appeal filed by the department is directed against the order dated 15.3.2011 of the CIT(A)-25, Mumbai for the assessment year 2005-06 on the following ground:

> "The ld CIT(A) erred in deleting the addition of Rs.39,68,000 made on account of contribution to heavy repair fund following the decision of Hon'ble High Court of Bombay in the case of Sind Co-operative Housing Society Ltd., wherein, it has been held that the said contributions made by the members of the society are exempt from taxation under the principle of mutuality. The decision has not been accepted by the department and the issue is sub-judice."

2. We observe that the assessee is a co-operative housing society. The assessee received an amount of Rs.39,68,000 on account of transfer of flat and garage and credited it to the general amenities fund as well as reserve fund. The Assessing Officer stated that the said amount is not exempt from tax as the principle of mutuality will not apply. However, ld CIT(A) deleted the said amount from taxation after observing that Hon'ble Bombay High Court has decided the issue in favour of the assessee for three assessment years i.e. 1999-2000, 2001-02 and 2003-04 in assessee's own case by relying on its decisions in the case of Sind Co-operative housing society ltd., vs. ITO, 317 ITR 47(Bom). However, the department has filed appeal before the Tribunal

against the impugned order of ld CIT(A) on the ground that the department has not accepted the decision and the issue is sub-judice.

3. At the time of hearing, learned Departmental Representative only relied on the order of the Assessing Officer and whereas ld A.R. filed copy of the orders of Hon'ble High Court dated 3.8.2010 in Income tax Appeal No.1453 & 1454 of 2007 and order dated 11.10.2010 in Income Tax Appeal No.1906 of 2010 and submitted that the Hon'ble High Court has decided the issue in assessee's own case by above orders by relying on its decision in the case of Sind Co-operative Housing Society ltd (supra). He submitted that ld CIT(A) has decided the issue in favour of the assessee by following the above decision of Hon'ble Jurisdictional High Court in assessee's own case (supra).

4. On consideration of the submissions of learned representatives of the parties and the fact that Hon'ble Jurisdictional High Court in assesse's own case by the orders (supra) has decided the issue in favour of the assessee and against the department that the contribution to building heavy repair fund received by the assessee is not exigible to tax, we do not find any infirmity in the order of ld CIT(A). Therefore, we uphold the order of ld CIT(A) by rejecting the ground taken by the department.

5. In the result, appeal filed by the department is dismissed.

Pronounced in the open court on 4th April, 2012

Sd/- (RAJENDRA SINGH) Accountant Member	Sd/- (B.R. MITTAL) Judicial Member

Mumbai, Dated 4th April , 2012
Parida
Copy to:
1. The appellant
2. The respondent
3. Commissioner of Income Tax (Appeals),25, Mumbai
4. Commissioner of Income Tax, 16 , Mumbai
5. Departmental Representative, Bench 'D' Mumbai

//TRUE COPY// BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI