IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI ' SMC' BENCH
MUMBAI BENCHES, MUMBAI

BEFORE SHRI R K PANDA, ACCOUNTANT MEMBER

ITA No. 7937/Mum/2010
(Asst Year 2005-06)

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| Chetak Co-op Hsg Society Ltd<br>Manu Mahal<br>35 Pali Hill<br>Bandra (W)<br>Mumbai 50 | Vs | The Asst Commr of Income Tax<br>19(3), Mumbai |
| (Appellant) | | (Respondent) |

PAN NO.AAAACO996J

Assessee by None
Revenue by Shri R K Gupta/DR

PER R K PANDA, AM

This appeal filed by the assessee is directed against the order dated 30.8.2010 of the CIT(A)- 30 Mumbai relating to assessment year 2005-06.

2 Despite service of notice through RPAD none appeared on behalf of the assessee. Therefore, the appeal is being disposed of on the basis of the material on record and after hearing the ld DR.

3 The only effective ground of appeal by the assessee reads as under:

*"Addition of transfer fees/donation of ₹ 44,380/- should be deleted from the income of Cooperative Housing Society (actually disallowed ₹ 55,126/- less disallowance of ₹. 10,750/-*

3.1 Facts of the case, in brief, are that the assessee is a Cooperative Housing Society consisting of various members and has the concept of mutuality. During the year under consideration, the assessee has received fee/donation of

₹ 80,126/- from incoming members and credited the same to society welfare amenities fund. The Assessing Officer asked the assessee to explain as to how the transfer fee is covered by the principle of mutuality. Rejecting the various explanations given by the assessee, the Assessing Officer held that transfer fee is not covered under the principle of Mutuality and the deduction is allowable only to the extent of ₹ 25,000/-. He accordingly, taxed the balance amount of ₹ 55,126/- being the difference of ₹ 80,126/- – ₹ 25,000/-.

4 In appeal, the CIT(A confirmed the disallowance made by the Assessing Officer for which the assessee is in appeal here before us.

5 I have considered the arguments made by the ld DR and perused the orders of the authorities below. The assessee, in its statement of facts has mentioned that it has received transfer fee of ₹ 80,126/- from three incoming members. According to the assessee, as per its statement of facts, the assessee has received ₹ 28,000/- as transfer fee from Shri Raul G Chandnani and Smt Nirmala G Chandnani; ₹ 19,376/-from Mrs Geeta Madhavan K and ₹ 32,750/- from Shri H Y Motiwala & others. In the statement of facts, the assessee has further mentioned that only ₹ 10,750/- can be disallowed being the excess transfer fee collected and ₹ 69,376/- has to be allowed on the basis of principle of mutuality. Since the Assessing Officer has already allowed ₹ 25,000/-; therefore, the balance amount of ₹. 44,380/- should be allowed, which is precisely the ground raised by the assessee.

5.1 I find, the issue now stands covered by the decision of the jurisdictional High Court in the case of Sind Cooperative Housing Society vs ITO reported in 317 ITR 47 according to which charging of transfer fees under the byelaws of the Cooperative Society has no element of trading or commerciality. Members alone having right to share surplus; therefore, principle of mutuality is applicable to the society. Accordingly, it was held that receipt of transfer fee is not liable to tax.

6 Respectfully following the decision of the jurisdictional High Court, I hold that the amount of ₹ 44,380/- being the transfer fee should be deleted from the income of the cooperative housing society on the basis of principle of mutuality. I hold and direct accordingly. The ground raised by the assessee is accordingly allowed.

7 In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court at the time of hearing i.e. on 15th Feb 2011.

Sd/-

( R K PANDA )
Accountant Member

Place: Mumbai : Dated: 15th Feb 2011
Raj*

Copy forwarded to:

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|---|---|
| 1 | Appellant |
| 2 | Respondent |
| 3 | CIT |
| 4 | CIT(A) |
| 5 | DR |

/TRUE COPY/
BY ORDER

Dy /AR, ITAT, Mumbai