IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH “C”, MUMBAI

BEFORE SHRI RAJENDRA SINGH, ACCOUNTANT MEMBER AND SHRI VIVEK VARMA, JUDICIAL MEMBER

ITA No. 8122/Mum/2011
Assessment Year : 2006-07

Income tax Officer Ward 16(2)(4) Matru Mandir Tardeo Road Mumbai-400 007.	Vs.	M/s. Prithvi Co-op. Hsg. Soc. Ltd., 21 Altamount Road Mumbai-400 026 PAN No. AAAAP 2333 A
(Appellant)		(Respondent)

Appellant by	:	Shri Sandip Goyal
Respondent by	:	Shri Vipul B. Joshi and Ms. Sanjivani More

Date of hearing	:	19.11.2012
Date of Pronouncement	:	19.11.2012

O R D E R

PER RAJENDRA SINGH, AM:

This appeal by the revenue is directed against the order dated 20.9.2011 of CIT(A) for the assessment year 2006-07. The disputes raised by the revenue in the appeal relate to applicability of principles of mutuality in relation to transfer fees, voluntary donation and non occupancy charges received from members as well as the interest income received from fixed deposit and saving bank account.

2. Before us, the ld. AR for the assessee at the very outset pointed out that the issue regarding applicability of principle of mutuality in relation to transfer fees, voluntary donation and non-occupancy charges is covered by the decision of the Tribunal in assessee's own case in assessment year 2004-05 in which the Tribunal vide order dated 8.10.2009 in ITA No.7474/M/2007 had restored the issue to the file of AO for deciding afresh in the light of judgment of the Hon'ble High Court of Bombay in the case of Sind Co-op Hsg. Society Vs. ITO (182 Taxmann 346). The applicability of mutuality principle to interest income was also covered by the decision of the Tribunal in assessee's own case in assessment year 2004-05 (supra) and by the decision of the Tribunal in assessee's own case in assessment year 2003-04 in ITA No.5062/M/2006. The ld. DR placed reliance on the order of AO.

3. We have perused the records and considered the matter carefully. The dispute is regarding applicability of mutuality principle and exemption of income on account of transfer fees, non occupancy charges, voluntary donations received by the Co-op. Hsg. Society from members as well as to the interest income received from the fixed deposit and saving bank account of the society. We find that all these issues are covered by the decision of the Tribunal in assessee's own case. The issue of transfer fees, non-occupancy charge and voluntary donations is covered by the decision of the Tribunal in assessee's own

case for assessment year 2004-05 where the Tribunal restored the issue to the file of AO for fresh decision in the light of the judgment of Hon'ble High Court of Bombay in the case of Sind Co-op Hsg. Society (supra). Therefore respectfully following the decision of the Tribunal in assessment year 2004-05 (supra), we restore the issue to the file of AO for fresh decision. The issue of interest from fixed deposits and saving bank account is also covered in assessee's own case in assessment year 2004-05 (supra), as well assessment year 2003-04 (supra), in which it has been held that interest income will be covered by the principle of mutuality and the addition has been deleted. Respectfully following the decision of the Tribunal (supra), we delete the addition on account of interest this year also.

4. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 19.11.2012.

Sd/-	**Sd/-**
(VIVEK VARMA)	**(RAJENDRA SINGH)**
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated: 19.11.2012.
Jv.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT(A) Concerned, Mumbai
The DR " " Bench

True Copy

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.