IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA Nos.1897/Del/2016, 1898/Del/2016, 1899/Del/2016,
1900/Del/2016 & 1901/Del/2016
Assessment Years : 2006-07, 2007-08, 2010-11, 2011-12 & 2012-13

M/s Sports & Cultural Club (Regd.), 225A, Sector-15A, Noida. PAN : AAAJS0280J.	Vs.	Joint Commissioner of Income Tax, Range-1, 2 & 3, Noida.
(Appellant)		(Respondent)

Appellant by : Shri Ved Jain, Shri Ashish Chadha and Shri Ashish Goel, CAs.
Respondent by : Ms. Paramita Tripathy, CIT-DR.

Date of hearing : 31.08.2016
Date of pronouncement : 23.09.2016

ORDER

PER G.D. AGRAWAL, VP :-

These appeals by the assessee for the assessment years 2006-07, 2007-08, 2010-11, 2011-12 & 2012-13 are directed against the order of learned CIT(A)-I, Noida dated 31st March, 2016.

ITA No.1897/Del/2016 – Assessee's appeal for AY 2006-07 :-

2. In this appeal, the assessee has raised the following grounds :-

"1. The reassessment framed is illegal, unlawful and is against the natural law of justice.

2. That the initiation of proceedings u/s 147/148 as well as reassessment framed is illegal and unlawful.

It is well settled law that the assessment cannot be reopened merely on "change of opinion" where the

assessment has been framed u/s 143(3) of Income Tax Act, 1961.

3. That apart from para-2 the date given by the learned CIT(Appeal) for its approval on 28/03/2013 from CIT is contrary to the factual, thus, the assessment framed deserves to be null and void.

4. The learned CIT(Appeal) had failed to appreciate the written submission as well as the verbal submission given before him and twisted in his own manner to go against the humble appellant.

5. The learned CIT(Appeal) was not justified in taking the entire receipts of Rs.1,17,47,593/- as "taxable income". Such action is illegal, unlawful and against the natural law of justice and seems to be undue privilege of the proviso 251(1A) of Income Tax Act, 1961.

6. The learned CIT(Appeal) was unjustified in making an addition of Rs.69,41,650/- related to corpus fund. The contention given by him is contrary to the factual and seems to be held in discretionary manner.

7. That without prejudice to Para-6 an addition of Rs.69,41,650/- is illegal and unlawful as the learned CIT(Appeal) has not complied with the lawful obligation in service of notice u/s 251(1A) of Income Tax Act, 1961 in this respect.

The notice u/s 251(1A) of learned CIT(Appeal) is only related to enhancement of Rs.1,17,47,593/-, thus, further an addition of Rs.69,41,650/- is not valid in the eyes of law.

8. The appellant is a registered society and is in possession of registration u/s 12A of Income Tax Act, 1961, thus is quite eligible to claim the full exemption of income.

9. That the learned CIT(Appeal) itself has worked out an appeal effect for an enhancement, while gross receipts enhanced by learned CIT(Appeal) includes the assessed income of Rs.11,17,180/- related to "Interest" and "Rent", thus, it will be double taxation to this extent.

10. That the appellant craves their right to amend, delete or add any grounds of appeal at or before the time of hearing."

3. The facts of the case are that the assessee is a sports and cultural club which is registered u/s 12A(a) vide CIT's order dated 31st July, 2003. For the year under consideration, the assessee filed the return of income declaring loss of ₹9,54,992/- which was accepted in the order passed u/s 143(3) of the Income-tax Act, 1961. Subsequently, the case was reopened u/s 147 on the ground that the assessee being a mutual benefit organization, was not entitled for exemption u/s 11 in respect of interest income and rental income. While taking this view, the Assessing Officer relied upon the decision of Hon'ble Apex Court in the case of Bangalore Club Vs. CIT – [2013] 350 ITR 509. The Assessing Officer completed the assessment u/s 143(3) read with Section 147 of the Act and determined the income of the assessee at ₹11,17,181/-.

4. On appeal by the assessee, learned CIT(A) enhanced the income to ₹1,86,89,243/-. He was of the opinion that gross receipts as well as contribution to the corpus fund both are taxable. He found that during the year under consideration, there was gross receipt of ₹1,17,47,593/- and there was increase in the capital amounting to ₹69,41,650/-. He considered both these amounts as assessee's income and determined the taxable income at ₹1,86,89,243/- (1,17,47,593 + 69,41,650) as against the taxable income determined by the Assessing Officer at ₹11,17,181/-. The assessee, aggrieved with the order of learned CIT(A), is in appeal before us.

5. Learned counsel for the assessee referred to paragraph 18 of the CIT(A)'s order and pointed out that learned CIT(A) has denied the benefit of the doctrine of mutuality on the ground that it was not claimed in the return of income and, therefore, it cannot be claimed at a later stage. On merits also, he stated that the assessee is not entitled to benefit of mutuality. He stated that the CIT(A) was factually incorrect in observing that the assessee has not claimed the benefit of

mutuality before the Assessing Officer. He referred to page 1 of the assessment order and pointed out that not only the assessee claimed the benefit of mutuality before the Assessing Officer but the same was also accepted by the Assessing Officer. The Assessing Officer himself has noted that "The assessee being a mutual benefit of organization was not entitled for exemption u/s 11 and interest income and rental income being 3rd party receipts were taxable in the hands of the assessee". Thus, it is evident that the benefit of mutuality was claimed before the Assessing Officer and it was accepted by him in all other receipts except the receipt from interest income and rental income because it was received from third parties.

6. He further stated that it is a settled law that the clubs are entitled to benefit of mutuality. In this regard, he relied upon the decision of Hon'ble Apex Court in the case of Chelmsford Club Vs. CIT – [2000] 243 ITR 89 (SC) and CIT Vs. Bankipur Club Ltd. – [1997] 226 ITR 97 (SC). He further stated that even in the decision of Hon'ble Apex Court in the case of Bangalore Club (supra) relied upon by the Assessing Officer, the assessee i.e., Bangalore Club was allowed the benefit of doctrine of mutuality in respect of all other receipts except the interest income. Hon'ble Apex Court, while upholding the denial of exemption on account of mutuality in respect of interest income, has observed that the assessee has already availed the benefit of doctrine of mutuality in respect of surplus amount received as contribution. Thus, he submitted that the allowability of benefit of mutuality to the clubs is a well-settled law by a series of decisions of Hon'ble Apex Court. Moreover, the same was claimed as well as allowed by the Assessing Officer himself. Thus, the finding of learned CIT(A) while refusing the doctrine of mutuality to the assessee is factually as well as legally incorrect. He, therefore, submitted that the enhancement made by the learned CIT(A) should be deleted.

7. With regard to taxability of interest income, the learned counsel fairly admitted that the issue is settled against the assessee by the decision of Hon'ble Apex Court in the case of Bangalore Club (supra). Therefore, the same can be decided against the assessee. With regard to rental income, he stated that Hon'ble Apex Court in the case of Chelmsford Club (supra) has accepted that rental income would be governed by the principles of mutuality and would be exempt. However, the learned counsel was fair enough to admit that in the said case, the rental income was received from the members of the club but in the case of the assessee, it was received from non-members also and, therefore, the ratio of the decision of Hon'ble Apex Court in the case of Bangalore Club (supra) in respect of interest income would be applicable to the rental income also.

8. Thus, in effect, the learned counsel wanted the deletion of the enhancement made by the learned CIT(A).

9. Learned DR, on the other hand, relied upon the order of learned CIT(A) and he stated that the CIT(A) has discussed the issue at length and has given cogent reason for denying the benefit of mutuality to the assessee. The same should be upheld.

10. We have carefully considered the submissions of both the sides and have perused the material placed before us. The facts as discussed by the Assessing Officer in page 1 of the assessment order read as under:-

> *"The return was filed on 30-10-2006 declaring in loss of Rs.9,54,990/- in the status of AOP(T). The return was processed u/s 143(1) granting refund of Rs.1,24,850/-. The assessee is registered u/s 12A(a) vide ld. CIT order dated 31-07-2003. Assessee has shown gross receipts of Rs.1,17,47,593/- and after claiming Revenue Expenditure at Rs.1,27,02,485/- the deficit of Rs.9,54,992/- has been*

shown as returned income. Further the assessee furnished audit report u/s 12A(b) in which application of income applied to charitable or religious purposes has been shown at Rs.1,80,51,502/- which includes i) Revenue expenditure at Rs.94,06,793/- and capital expenditure at Rs.86,44,709/- . Gross receipts includes rental income of Rs.6,30,991/- and interest income of Rs.7,19,656/- which have also been claimed exempt u/s 11 of the Act. The assessment was completed u/s 143(3) of the Act, at returned loss of Rs.9,54,990/-. The assessee being a mutual benefit of organization was not entitled for exemption u/s 11 and interest income and rental income being 3rd party receipts were taxable in the hands of the assessee. Such omission and failure on the part of the assessee to disclose truly and fully all material facts necessary for the assessment has necessitated the initiation of proceedings u/s 147 of the IT Act."

(emphasis by underlining supplied by us)

11. From the above, it is evident that for the year under consideration, the assessee filed the return declaring loss of ₹9,54,990/- which was accepted u/s 143(1) as well as in the regular assessment completed u/s 143(3). Thereafter, the case was reopened u/s 147. The Assessing Officer has observed that the assessee is a mutual benefit organization. However, it is not entitled to exemption in respect of interest income and rental income being the receipt from third parties. Thus, the benefit of mutuality by the assessee was claimed in respect of all the receipts which was accepted by the Assessing Officer in the original order passed u/s 143(3). Even in the order passed u/s 143(3) read with Section 147, the Assessing Officer accepted that the assessee is a mutual benefit organization and all other receipts were accepted to be governed by the concept of mutuality. In respect of interest income and rental income being receipt from third parties, the Assessing Officer denied the benefit of mutuality. In view of this factual position, the finding of learned CIT(A) in paragraph 18, which we reproduce for ready reference, is contrary to the facts on record :-

> *"Coming to the next question of law whether the appellant could have claimed the benefit of the doctrine of mutuality if not claimed in the return of income at a later stage and more specifically in course of the appellate proceeding before the CIT(A) the answer is negative as an assessee which is registered as charitable institution u/s 12A cannot claim the benefit of doctrine of mutuality even otherwise even if it stakes its claim in the return of income and something which cannot be claimed in the return of income certainly cannot be claimed in an appellate proceedings based on the said return of income."*

12. Learned CIT(A) denied the assessee the benefit of mutuality on the presumption that the assessee has not claimed it in the return of income. However, we find this presumption of the CIT(A) to be factually incorrect. The assessee not only claimed the benefit of mutuality before the Assessing Officer, it was accepted also in the order passed u/s 143(3) as well as order of reassessment u/s 147. Moreover, we find that Hon'ble Apex Court in the case of Bankipur Club Ltd. (supra) explained the concept of mutuality in the following terms :-

> *"Under the Income-tax Act, what is taxed is, the "income, profits or gains" earned or "arising", "accruing" to a "person". Where a number of persons combine together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to those persons cannot be regarded in any sense as profit. There must be complete identity between the contributors and the participators. If these requirements are fulfilled, it is immaterial what particular form the association takes. Trading between persons associating together in this way does not give rise to profits which are chargeable to tax. Where the trade or activity is mutual, the fact that, as regards certain activities, certain members only of the association take advantage of the facilities which it offers does not affect the mutuality of the enterprise."*

13. Their Lordships, after considering the facts of the case, upheld the order of the Hon'ble High Court wherein the surplus of the receipt

over expenditure was allowed as exempt on account of mutuality with the following finding:-

> *"Held, dismissing the appeals, that in the light of the findings of fact the receipts for the various facilities extended by the clubs to its members, as part of the usual privileges, advantages and conveniences, attached to the membership of the club, could not be said to be "a trading activity". The surplus-excess of receipts over the expenditure- as a result of mutual arrangement, could not be said to be "income" for the purpose of the Act."*

14. Similar view was reiterated by their Lordships in the case of Chelmsford Club (supra) with the following finding :-

> *"Held, reversing the decision of the High Court, that the assessee's business was governed by the doctrine of mutuality. It was an admitted fact that the business of the assessee did not come within the scope of business referred to in section 2(24)(vii). It was not only the surplus from the activities of the business of the club that was excluded from the levy of income-tax, even the annual value of the club house, as contemplated in section 22 of the Act, would be outside the purview of the levy of income-tax."*

15. That even in the case of Bangalore Club (supra) relied upon by the Assessing Officer for disallowance of interest, their Lordships have observed that the assessee was already allowed the benefit of doctrine of mutuality in respect of income other than interest income. Thus, the concept of mutuality was accepted even in the case of Bangalore Club (supra) by Hon'ble Apex Court which is relied upon by the Revenue. In that case, the benefit of mutuality was not extended to interest income because it lacked complete identity between the contributors and participators.

16. It is undisputed that the receipt, other than the interest income and rental income, is from the members of the club and, therefore,

would fall within the ambit of mutuality as defined by Hon'ble Apex Court in the case of Bankipur Club Ltd. (supra). The Assessing Officer had also accepted that the assessee club is entitled to benefit of mutuality. In our opinion, the view taken by the Assessing Officer is well –supported by the decision of Hon'ble Apex Court in the case of Bankipur Club Ltd. (supra), Chelmsford Club (supra) as well as Bangalore Club (supra). Therefore, on this point, we reverse the order of learned CIT(A) and restore that of the Assessing Officer i.e., all receipts of the assessee club except receipt from interest as well as rent is out of the purview of taxation on account of the doctrine of mutuality. Insofar as interest income and rental income are concerned, we, respectfully following the decision of Hon'ble Apex Court in the case of Bangalore Club (supra), hold that the same cannot be said to be governed by the concept of mutuality because the receipt is not from the members of the club. Accordingly, the assessment of these two incomes in the hands of the assessee is upheld.

ITA Nos.1898 to 1901/Del/2016 – Assessee's appeals for 2007-08, 2010-11, 2011-12 & 2012-13 :-

17. At the time of hearing before us, both the parties agreed that the facts as well as the grounds raised in all these four years are identical to the facts for assessment year 2006-07 and therefore, their arguments would remain the same as were advanced in assessment year 2006-07.

18. The learned counsel, however, pointed out that in assessment year 2007-08, the Assessing Officer assessed the gross receipt from rent while, in other years, he has assessed the rental income after allowing certain deductions. His only prayer was that the Assessing Officer should be directed to determine the rental income for

assessment year 2007-08 also in the similar manner as was done by him for assessment year 2006-07, 2010-11, 2011-12 and 2012-13.

19. Learned DR has no objection to this request of the assessee's counsel.

20. In view of the above and for the detailed discussion made while deciding the assessee's appeal for assessment year 2006-07, we delete the enhancement made by the learned CIT(A) and uphold the order of the Assessing Officer for assessment year 2010-11, 2011-12 and 2012-13. For assessment year 2007-08, we delete the enhancement made by learned CIT(A) and uphold the assessment of interest income by the Assessing Officer and, for rental income, we direct the Assessing Officer to recompute the same as computed in assessment year 2006-07.

21. In the result, the appeals of the assessee are partly allowed.

Decision pronounced in the open Court on 23.09.2016.

Sd/-	Sd/-
(CHANDRA MOHAN GARG)	**(G.D. AGRAWAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

VK.

Copy forwarded to: -

1. Appellant : **M/s Sports & Cultural Club (Regd.), 225A, Sector-15A, Noida.**
2. Respondent : **Joint Commissioner of Income Tax, Range-1, 2 & 3, Noida.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar