

(2009) 12 MAD CK 0186

Madras High Court**Case No:** Tax Case (Appeal) No"s. 2156 of 2006 and 214, 1024 and 1025 of 2007

Coimbatore Cosmopolitan Club

APPELLANT

Vs

Assistant Commissioner of
Income TaxRESPONDENT

Date of Decision: Dec. 22, 2009**Acts Referred:**

- Companies Act, 1956 - Section 25
- Income Tax Act, 1961 - Section 11, 143(1), 143(3), 260A

Citation: (2010) 229 CTR 414**Hon'ble Judges:** M.M. Sundresh, J; K. Raviraja Pandian, J**Bench:** Division Bench**Advocate:** M.P. Senthilkumar, for the Appellant; J. Naresh Kumar, for the Respondent

Judgement

K. Raviraja Pandian, J.

The tax case appeals in Tax Case (Appeal) Nos. 2156 of 2006, 214, 1024 and 1025 of 2007 are filed u/s 260A of the IT Act, 1961 against the order of the Tribunal, Madras "D" Bench, Chennai, dt. 25th Nov., 2005 in ITA Nos. 1548, 1549, 1550 and 1551/Mad/2002 for the asst. yrs. 1994-95, 1995-96, 1996-97 and 1997-98 respectively. The appeals are admitted on the following questions of law in respect of Tax Case (Appeal) Nos. 2156 of 2006 and 214 and 1024 of 2007 and on only question of law No. 1 in respect of Tax Case (Appeal) No. 1025 of 2007:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the interest income of the appellant club was not exempt on the principles of mutuality ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the miscellaneous income viz., hall charges, guest charges, mike charges, etc., of the appellant club was not exempt on the principles of mutuality?

2. The facts of the case in brief are as follows:

(a) Tax Case (Appeal) No. 2156 of 2006:

The appellant club is a company registered u/s 25 of the Companies Act, 1956. The appellant filed its return of income admitting deficit of Rs. 13,26,288. The AO while completing the assessment arrived at net surplus of Rs. 2,06,372 and allowed the same to be accumulated u/s 11 of the IT Act. Aggrieved by the assessment order, the appellant filed an appeal before the CIT(A) claiming that the interest income from fixed deposits and miscellaneous income consisting of charges received from members towards hall charges for dinner, guest charges, mike charges, telephone calls, recovery charges, etc., are not chargeable to tax since appellant company is a mutual concern and claimed exemption u/s 11 in the alternative. The CIT(A) had dismissed the appeal in common order for asst. yrs. 1994-95 to 1996-97. Aggrieved by the order the appellant filed appeal before the Tribunal and the Tribunal dismissed the appeals. Aggrieved by the same, the present appeal is filed.

(b) Tax Case (Appeal) No. 214 of 2007:

The appellant club is a company registered u/s 25 of the Companies Act, 1956. The AO had while completing the assessment u/s 143(3) held that the concept of mutuality will not be applicable in respect of miscellaneous income amounting to Rs. 1,53,452 and interest on investment amounting to Rs. 1,86,365 by observing that the same were received from non-members and assessed the same to tax. Aggrieved by the assessment order, the appellant filed an appeal before the CIT(A) claiming that the interest income from fixed deposits and miscellaneous income consisting of charges received from members towards hall charges for dinner, guest charges, mike charges, telephone calls, recovery charges, etc., are not chargeable to tax since appellant company is a mutual concern and claimed exemption u/s 11 in the alternative. The CIT(A) had dismissed the appeal in common order for asst. yrs. 1994-95 to 1996-97. Aggrieved by the order the appellant filed appeal before the Tribunal and the Tribunal dismissed the appeal. Aggrieved by the same, the present appeal is filed.

(c) Tax Case (Appeal) No. 1024 of 2007:

The appellant club is a company registered u/s 25 of the Companies Act, 1956. The appellant filed its return of income declaring deficit of Rs. 11,73,612. The return was processed u/s 143(1)(a) on 15th Feb., 1996. Subsequently, the AO had while completing the assessment u/s 143(3) held that the concept of mutuality will not be applicable in respect of interest on investment and miscellaneous income received from non-members amounting to Rs. 2,91,490 and assessed the same to tax. Aggrieved by the assessment order, the appellant filed an appeal before the CIT(A) claiming that the interest income from fixed deposits and miscellaneous income consisting of charges received from members towards hall charges for dinner, electricity charges, guest charges, mike charges, telephone calls, recovery charges,

etc., are not chargeable to tax since appellant company is a mutual concern and claimed exemption u/s 11 in the alternative. The CIT(A) had dismissed the appeal in common order for asst. yrs. 1994-95 to 1996-97. Aggrieved by the order the appellant filed appeal before the Tribunal and the Tribunal dismissed the appeal. Aggrieved by the same, the present appeal is filed.

(d) Tax Case (Appeal) No. 1025 of 2007:

The appellant club is a company registered u/s 25 of the Companies Act, 1956. The AO had while completing the assessment u/s 143(3) held that the concept of mutuality will not be applicable in respect of scrap sales out of miscellaneous income amounting to Rs. 3,828 and interest on investment amounting to Rs. 3,06,031 by observing that the same were received from non-members and assessed the same to tax. Aggrieved by the assessment order, the appellant filed an appeal before the CIT(A) claiming that the interest income from fixed deposits and miscellaneous income consisting of charges received from members towards hall charges for dinner, electricity charges, guest charges, mike charges, telephone calls, recovery charges, etc., are not chargeable to tax since appellant company is a mutual concern and claimed exemption u/s 11 in the alternative. The CIT(A) had dismissed the appeal in common order for asst. yrs. 1994-95 to 1996-97. Aggrieved by the order the appellant filed appeal before the Tribunal and the Tribunal dismissed the appeal. Aggrieved by the same, the present appeal is filed.

3. Learned Counsel appearing on either side submitted that the first question of law in the first three appeals in Tax Case (Appeal) Nos. 2156 of 2006 and 214 and 1024 of 2007 and the question of law in Tax Case (Appeal) No. 1025 of 2007 are decided by the Division Bench of this Court in the case of [Madras Gymkhana Club Vs. The Deputy Commissioner of Income Tax](#), and held against the assessee.

4. In respect of the second question of law, learned Counsel appearing for the assessee submitted that the issue has been considered and decided by the Supreme Court in the case of [Commissioner of Income Tax, Bihar Vs. M/s. Bankipur Club Ltd.](#), at page Nos. 97 and 109. However on a reading of the order of the Tribunal, there is no finding available as to the miscellaneous income, hall charges, guest charges, mike charges, etc. Hence, we are of the view that the issue has to be remitted back to the Tribunal to consider the same in the light of the judgment of the Supreme Court in the case of CIT v. Bankipur Club Ltd. (supra).

5. In view of the above reasoning, the first question of law in the first three appeals in Tax Case (Appeal) Nos. 2156 of 2006, 214 and 1024 of 2007 and the question of law in Tax Case (Appeal) No. 1025 of 2007 are answered against the assessee and in favour of the Revenue by following the Division Bench judgment of this Court in the case of Madras Gymkhana Club v. Dy. CIT (supra) and the second question of law in the first three appeals has not been answered by this Court and the matter is remitted back to the Tribunal for deciding the issue in the light of the judgment of

the Supreme Court in the case of CIT v. Bankipur Club Ltd. (supra).

Accordingly, Tax Case (Appeal) Nos. 2156 of 2006, 214 and 1024 of 2007 are disposed of and Tax Case (Appeal) No. 1025 of 2007 is dismissed.