IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 277 of 2011 (O&M)

Date of Decision: 5.12.2015

Commissioner of Income Tax, Panchkula

....Appellant.

Versus

M/s Gymkhana Club, Panchkula

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**
**HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Yogesh Putney, Advocate for the appellant.

Mr. Rajiv Sharma, Advocate for the respondent.

**AJAY KUMAR MITTAL, J.**

1. This order shall dispose of two appeals bearing ITA Nos. 277 and 278 of 2011 as according to learned counsel for the parties, common questions of law and facts are involved in the appeals. For brevity, the facts are being extracted from ITA No. 277 of 2011.

2. ITA No. 277 of 2011 has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 28.2.2011 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 1033/Chandi/2010 for the

assessment year 2007-08. The appeals were admitted by this Court vide order dated 19.10.2011 for determination of the following substantial questions of law:-

1) Whether in the fact and circumstances of the case, the Ld. ITAT was right in law in holding that the assessee club is a mutual concern dis-regarding the finding of the A.O. that the financial and administrative control over the assessee club is in the hands of HUDA and that there is no identity between the contributors and the participants of the assessee club?

2) Whether on the facts and circumstances of the case, the Ld. ITAT was right in law in treating the charges received from non-member guests as not liable to tax?”

3. A few facts necessary for adjudication of the present appeal as narrated therein may be noticed. The assessee filed its return on 31.10.2007 for the assessment year 2007-08 declaring nil income being a mutual concern. As per income and expenditure account, the assessee had shown surplus of ₹ 28,78,817/- including interest income amounting to ₹ 1,79,395/-. The Assessing Officer vide assessment order dated 29.12.2009 (Annexure A-1) assessed the income of the assessee at ₹ 28,78,817/- holding that there was no complete identity between the contributors and the participants and, therefore, it was not a mutual concern. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity “the CIT(A)”]. The CIT(A) vide order dated 3.5.2010 (Annexure A-2) allowed the appeal and

held the assessee to be a mutual concern. The excess of income over expenditure amounting to ₹ 28,78,817/- taxed by the Assessing Officer was directed to be treated as exempt. Against the order, Annexure A-2, the revenue filed an appeal before the Tribunal. The Tribunal vide common order dated 28.2.2011 (Annexure A-3) dismissed the appeals of the revenue for the different assessment years following its earlier decision in the case of the assessee for the assessment year 2004-05. Hence, the present appeals by the revenue.

4. We have heard learned counsel for the parties.

5. There was no dispute between the parties that the matter stands concluded by the decision of this Court in the case of the assessee itself in **ITA No. 690 of 2005 (The Commissioner of Income Tax, Panchkula v. M/s Gymkhana Club, Panchkula)** and other connected cases decided on 30.11.2015.

6. Disposed of in the same terms.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**December 5, 2015** **(RAMENDRA JAIN)**
gbs **JUDGE**