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IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.541 of 2007

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M/S Patna Golf Club Limited through its Honorary Secretary Manik Vedsen, Bailey Road, P.O. Rajbanshi Nagar P.S. Sachivalaya Thana District Patna

.... Appellant

Versus

1. Commissioner of Income Tax-I, Patna
2. Income Tax Officer, Ward-2(2), Patna

.... Respondents

with

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Miscellaneous Appeal No. 542 of 2007

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M/S Patna Golf Club Limited through its Honorary Secretary Manik Vedsen, Bailey Road, P.O. Rajbanshi Nagar P.S. Sachivalaya Thana District Patna

.... Appellant

Versus

3. Commissioner of Income Tax-I, Patna
4. Income Tax Officer, Ward-2(2), Patna

.... Respondents

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Appearance :
(in both cases)

For the Appellant : Mr. Ajay Kumar Rastogi, Advocate
For the Respondents: Mrs. Archana Sinha, Sr. Standing Counsel
Mr. Alok Kumar, Advocate
Ms. Shalini Bihari, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 11-03-2016

The assessee is in appeal under Section 260A of the Income Tax Act, 1961 arising out of an order passed by the Income Tax Appellate Tribunal, Patna Bench, Patna (for short, ‘the Tribunal’) pertaining to assessment years 1997-1998 and 1998-1999. M. A. No. 541 of 2007 arises out of assessment year 1998-1999 whereas M.A. No. 542 of 2007 arises out of assessment year 1997-1998.

2. This court has formulated following substantial

questions of law arise for consideration:-

(i) *Whether the Tribunal is justified in following the judgements of Karnataka High Court and Gujarat High Court reported in 287 ITR page 263 and 211 ITR Page 379 for holding that interest income received by the club from fixed deposit in bank is not income from mutual activity?*

(ii) Whether on the facts and in the circumstances of the case the Tribunal is justified in not considering the submission that interest cannot be treated as income from other sources and also in giving a complete go by to the judicial decisions relied upon in this regard vide submission dated 11.11.2003?

(iii) Whether the Tribunal is justified in upholding separate and independent taxation of interest from bank even though there is a loss of Rs. 23,870/- after considering the interest of Rs. 2,44,232/- ?

3. As per the facts available on record, the assessee has received interest income from the funds deposited in the bank and the said income claims to have been utilized for the maintenance and other objectives of the club and, therefore, that income has to be treated as incidental and that should not be taxed. Reliance is placed upon a Supreme Court judgment in the case of CIT Vs. Bankipur club[1997] 226 ITR page 97 and also upon the judgment in the case of Chemsford Club Vs. CIT 243 ITR 87.

4. On the other hand, argument of learned counsel for the Revenue is that the income derived from interest is from other sources and principle of mutuality does not apply to the income so derived from the fixed deposit. She has placed reliance upon a Division Bench judgment of Gujarat High Court in the case of Sports

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Club of Gujrat Limited Vs. Commissioner of Income Tax 171 ITR 504 which has been referred to by the Commissioner, Income Tax (Appeals) as well as by the Tribunal.

5. We do not find any substantial question of law arises for consideration. In Bankipur Club Ltd.'s case, seven cases falling under group E were segregated from other batch of cases. In the seven cases, the income was derived from the property let out and also interest received from F.D.R. etc.. It is not disputed that income from property is taxable only under the head Income from House property. The amount claimed to be exempted was from income received from the property let out and the interest by way of FDR etc. The group of seven cases falling in Group -E was decided by separate order reported as (2004) 140 Taxman 378 – Commissioner of Income tax Vs. Cawnpore Club Ltd. The order reads as under:-

> "1. One of the questions which the High Court had decided in other cases relating to the same assessee was that the doctrine of mutuality applied and, therefore, the income earned by the assessee from the rooms let out to its members could not be subjected to tax. No appeal had been filed against the said decision and the matters stood concluded as far as the assessee was concerned. This being so, no useful purpose would be served in proceeding with the appeals on the other questions when the respondent cannot be taxed because of the principle of mutuality."

6. We do not find that such order is helpful to the arguments raised. It is not the case of the assessee that interest from the fixed deposit can be treated as income from house property. The issue of

interest from the fixed deposits has been examined by Gujarat High Court in Sports Club of Gujarat Ltd.'case supra, where the court held as under:-

> *"8. We now revert to the question whether the income derived by way of interest on fixed deposits from banks is exigible to tax notwithstanding the finding that the principle of mutuality applies to the assessee club. We have already pointed out earlier that one of the essentials of mutuality is that the contributors to the common fund are entitled to participate in the surplus, thereby creating an identity between the participators and the contributors. Once such an identity is established, the surplus income would not be exigible to tax on the principle that no man can make a profit out of himself. However, as pointed out earlier, the objects clause in the memorandum and articles of association empowers those in the management of the assessee-club to invest and deal with moneys of the club not immediately required in such manner as may from time to time be determined by them. Under this clause, the investment need not be confined to investment by way of fixed deposits with banks. It can take any other form or shape, such as investment in shares, real estate, etc. When income is derived from such investment, whether by way of interest, dividend or rent, it is derived from a third party and is not by way of contribution from the members of the club. …..*
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> *9. It was lastly argued by counsel for the assessee that the investment of the unutilized surplus in fixed deposits was merely incidental to the main objects of the club and, therefore, the income from interest received from the banks on the fixed deposits could not be brought to tax. In support of this contention, considerable reliance was placed on the following observation found at page 695 in IRC vs. Westleigh Estates Co. Ltd. (1925) 12 Tax Cases 657*:
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> > *"I think the proper mode of regarding the company I the present case is a convenient instrument or medium for enabling the members to conduct a social club the objects of which are immune fro every taint of commerciality, the transactions of sale and purchase being merely incidental to the attainment of the main object*".

7. Such judgment was followed later in *211 ITR 379*

Rajpath Club Ltd. Vs. Commissioner of Income Tax by Gujarat High Court, wherein the court held that the income received by the assessee – club by way of interest is exigible to tax.

8. Thus we find that the principle of mutuality is not available to the assessee. We do not find that any such inference can be drawn from the order of the Supreme Court in Cawnpore Club Ltd.' Case supra if read along with the order passed in Banikpur Club Ltd (supra). We find that the interest income cannot be form the house property and consequently this income is from other sources.

9. In view of judgment of Gujarat High Court in the case of Sports Club of Gujrat Limited (supra) there is no principle of mutuality between the interest income from the F.D.R. and other activities of the club.

10. In view thereof, the questions of law are answered in affirmative in favour of the Revenue and against the assessee.

11. The appeals thus stand dismissed.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

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