IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) No.449 of 2009

M/s.Madras Cricket Club ... Appellant

vs.

Income Tax Officer,
Company Ward IV(1),
Chennai-600 034 ... Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal, Madras "D" Bench, dated 07.10.2008 in ITA No.610/Mds/2007, for the assessment year 2000-01 as against the order of the Commissioner of Income Tax Appeals made in I.T.A. No. 571 mds/2008 dated 07.10.2008 as against the order of the Income Tax officer Company Ward IV(1) Chennai 34 for the assessment year 2000-2001 dated 28.12.2006.

For Appellant : Mr.G.Ashokapathy for
M/s.Pass Associates
For Respondent : Mr.Karthick Ranganadhan

JUDGMENT

[Delivered by T.S.Sivagnanam, J.]

This appeal by the assessee is directed against the order dated 07.10.2008 passed by the Income Tax Appellate Tribunal, Madras "D" Bench (the 'Tribunal' for brevity), in ITA No.610/Mds/2007, for the assessment year 2000-01.

2.The Appeal has been admitted, vide order dated 30.06.2009, on the following Substantial Question of Law:

> "Whether the Income Tax Appellate Tribunal is right in law in holding that the principle of mutuality and 'No Man can trade with himself' is not applicable to the interest income from fixed deposit earned by the appellant from bank out of the surplus funds raised from contribution of several members of the appellants club even when the benefit of interest derived is utilised by several members of the appellant's club?"

3.We have heard Mr.G.Ashokapathy, the learned counsel for the appellant/assessee and Mr.Karthick Ranganathan, the learned Counsel for the respondent/Revenue.

4.The learned counsel for the appellant/assessee fairly submits that the above Substantial Question of Law has been decided against the assessee in the assessee's own case in T.C.A.Nos.928, 1067 to 1069 of 2009 dated 13.10.2009 (M/s.Madras Cricket Club vs. The Commissioner, Income Tax Officer, Company Ward IV (1), Chennai-34).

5.Further in the case of Madras Gymkhana Club vs. Deputy Commissioner of Income Tax [(2010) 328 ITR 0348], an identical question came for consideration and the same has been decided against the assessee.

6.The Hon'ble Supreme Court in Bangalore Club vs. Commissioner of Income Tax [(2013) 350 ITR 0509] held that if the object of the assessee company claiming to be a "mutual concern" or "club", is to carry on a particular business and money is realized both from the members and from non-members, for the same consideration by giving the same or similar facilities to all alike in respect of the one and the same business carried on by it, the dealings as a whole disclose the same profit earning motive and are alike tainted with commerciality.

7.In the light of the above decisions, the appeal filed by he assessee has to be necessarily dismissed and accordingly, the tax case appeal is dismissed and the Substantial Question of Law is answered against the assessee. No costs.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

msk

To

1.The Income-Tax Appellate Tribunal, Chennai "D" Bench.
Madras.
2. The Income Tax Appellate Tribunal, Bench D, Chennai.
3. The Income Tax officer, Company Ward IV(1), Chenni
34.
+1 CC to M/s. Pass Associates sr 74243.
+1 CC to M/s. Karthick Ranganadhanm Advocate sr 73811.

T.C. (Appeal) No.449 of 2009

SP(19/11/2018)