

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.1311 OF 2016

Commissioner of Income-Tax ... Appellant

V/s.

Goregaon Sports Club ... Respondent

Mr.Ashok Kotangle i/by Ms.Padma Divakar for the Appellant.
Ms.Aarti Sathe for the Respondent.

**CORAM : AKIL KURESHI AND
B.P.COLABAWALLA, JJ.
DATE : JANUARY 31, 2019.**

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal, raising following questions for our consideration:-

- “(a) Whether on the facts and in the circumstances of the case and in Law, the Tribunal was right in directing the AO to grant exemption under Section 11 of the I.T. Act, 1961 ignoring the detailed reasoning given by the AO?
(b) Whether on the facts and circumstances of the case and in Law, the Tribunal was right in ignoring the fact that

the sports activities and other recreation amenities are mainly for members and hence assessee is a mutual concern and not a charitable institution?

(c) Whether on the facts and circumstances of the case and in Law, the Tribunal was right in holding that the assessee club is not covered by the principle of mutuality thereby violating provisions of Section 13 which disentitles the trust from claiming exemption under Section 11 of the I.T.Act, 1961?

(d) Whether on the facts and circumstances of the case and in Law, the Tribunal was right in ignoring the ratio involved in the case of CIT Vs. Bankipur Club Ltd 226 ITR 97 (SC) wherein the Supreme Court has discussed the principle of mutuality in respect of income from sports activity and the taxability of income received from non members which is squarely applicable to this case?

(e) Whether on the facts and circumstances of the case and in Law, the Tribunal was right in granting relief to the assessee on income from other sources, ignoring the fact that such incomes are earned from the non-members?"

3. Learned counsel for the parties point out that all issues raised by the revenue in this appeal came up for consideration before this Court in revenue's Income Tax Appeal No.6301 of 2010. Appeal was disposed of by this Court by order dated 14th February, 2012, making following observations:-

“1. This Appeal by the Revenue under Section 260A of the Income Tax Act, 1961 arises out of a decision of the Income Tax Appellate Tribunal dated 24 March 2010 for Assessment Year 2003-04. The following questions of law are raised in the Appeal:

(a) Whether on the facts and circumstances of the case and in law, the ITAT was right in directing the AO to grant exemption under Section 11 of the IT Act ignoring the detailed reasoning given by the AO?

(b) Whether on the facts and circumstances of the case and in law, the ITAT was right in ignoring the fact that the sports activities and other recreation amenities are mainly for members and hence assessee is a mutual concern and not a charitable institution?

(c) Whether on the facts and circumstances of the case and in law, the ITAT was right in holding that the assessee club is not covered by the principle of mutuality thereby violating provisions of Section 13 which disentitles the trust from claiming exemption under Section 11?

(d) Whether on the facts and circumstances of the case and in law, the ITAT was right in ignoring the ratio involved in the case of CIT Vs. Bankipur Club Ltd 226 ITR 97 (SC) wherein the Supreme Court has discussed the principle of mutuality in respect of income from sports activity and the taxability of income received from non members which is squarely applicable to this case?

(e) Whether on the facts and circumstances of the case and in law, the ITAT was right in granting relief to the assessee on income from other sources, ignoring the fact that such incomes are earned from the non-members?

2. In the present case the Assessee is registered

under the Bombay Public Trusts Act, 1950 and under Section 12A of the Income Tax Act, 1961. The main object of the Assessee is to promote sports and athletic activities. The Assessing Officer upon the return of the income being filed, passed an order of assessment under Section 143(3) but denied the exemption claimed under Section 11. Subsequently, the assessment was reopened since there was a mistake in calculations and while completing the reassessment the Assessing Officer treated the Assessee as a mutual concern and denied an exemption under Section 11. In Appeal, the Commissioner (Appeals) came to the conclusion that the promotion of sports and games fell within the purview of Section 2 (15) since it constituted an advancement of any other object of general public utility. The Commissioner (Appeals) noted that the Assessing Officer rejected the claim of the Assessee merely on the ground that the facilities for the promotion of sports are provided to a limited group of people, being the members of the club. The Commissioner (Appeals) held on the basis of factual material on record that the Assessee had acquired land from the State government which was utilised for facilities such as providing an Olympic size swimming pool which was open to the general public on an annual membership basis without restriction as to caste, creed, religion or profession. The order of the Commissioner (Appeals) has been confirmed in Appeal by the Tribunal relying upon its decision dated 18 September 2008 and 29 July 2009 in respect of the Assessee.

3. This Court had the occasion to consider similar issues in a Judgment delivered in the case of Director of Income Tax (Exemption) Vs. The Chembur Gymkhana (Income Tax Appeal No.5568 of 2010) decided on 13 February 2012. This

Court, following the law laid down by the Supreme Court, has held that the fact that the membership of the club is open to a section of the community would not detract from the fact that the club has been constituted for the advancement of any other object of general public utility. The Club is not formed for the benefit of an individual or a group of individuals as such. However, while affirming that the object of the Club falls within the purview of Section 2(15), this Court had remanded the proceedings back to the Assessing Officer to determine whether as regards the application of the funds, the requirements of Section 11 have been duly fulfilled. In the present case also the Assessing Officer did not have an occasion to consider the application of the funds with reference to provisions of Section 11, since he had come to the conclusion that the Assessee does not fulfill the charitable purpose as defined in Section 2(15).

4. As regards question (a), we remit the proceedings back to the Assessing Officer to determine whether the requirements of Section 11 have been duly fulfilled as regards the application of the funds. The Assessing Officer shall carry out the exercise expeditiously. So far as question (b) is concerned, we hold that the Assessee is a Charitable Institution. Consequently, questions (c), (d) and (e) do not arise.”

4. Accordingly, in the present case also question No.(a) would stand remitted to the Assessing Officer in determining whether the requirement of Section 11 of the Income Tax Act, having duly fulfilled as regard to the application of fund. Such exercise may

be carried out expeditiously.

5. To this limited extent, the appeal is allowed.

6. Rest of the questions are dismissed.

7. Appeal disposed of accordingly.

(B.P.COLABAWALLA,J.)

(AKIL KURESHI,J.)

....