R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 235 OF 2017

Commissioner of Income Tax (Exemptions) .. Appellant

Versus

The Bombay Presidency Gold Club Ltd .. Respondent

....

- Mr. Suresh Kumar for the Appellant
- Mr. Percy Pardiwalla, Sr. Counsel a/w Mr. Atul Jasani for the Respondent

....

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : APRIL 2, 2019.

P.C.:

1. Revenue is in the appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short).

2. Following question is presented for our consideration:-

> "Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing the assessee's appeal and directing the Assessing Officer to delete the addition of interest holding that the income is exempt u/S. 11(5) and the proviso to Section 2(15) has no application to the facts of the case?"

3. Brief facts are as under:-

3.1 Respondent assessee is a Trust registered under Section 12A of the Income Tax Act, 1961 ("the Act" for short). The assessee filed return of income for the assessment year 2009-10. The Assessing Officer undertook scrutiny assessment of the return. He passed order under Section 143(3) of the Act on 30.12.2011 holding that the assessee's interest income of Rs. 2.17 Crores was not exempt from tax. He was of the opinion that by virtue of the inserted proviso to Section 2(15) of the Act, defining the term "charitable purpose", the assessee would not satisfy the conditions contained therein.

3.2 The issue eventually reached the Tribunal. The Tribunal while allowing the appeal of the assessee by the impugned judgment, noted that the assessee's principal object and activity was of providing gold club and allied facilities to its members for promotion of the sport. The assessee had invested its surplus funds in the banks thereby earning interest income of Rs. 2.17 Crores during the period in question. The Tribunal noted that the Assessing Officer had disallowed the claim on three grounds namely:- (i) With reference to the proviso to Section 2(15) of the Act; (ii) That the registration of the assessee under Section 12A was withdrawn and (iii) by relying on the decision of the Bombay High Court in case of **CIT Vs. Common Effluent Treatment Plant**[1] to hold that the interest received from the non-members is not exempt on the principle of mutuality. The Tribunal noted that the assessee was incurring losses, the interest income merely enabled the assessee to reduce the loss. The Tribunal further noted that under Section 11(5) and Section 13(1)(d)(ii), the assessee would be compelled to invest its surplus funds in specified banks or financial institutions failing which the exemption would be withdrawn. The Tribunal was, therefore, of the opinion that the assessee was under legal obligation to invest such funds in specified institutions. The Tribunal also noted that the order cancelling registration under Section 12A of the Act was reversed. The Tribunal was of the opinion that the assessee did not carry out any activity in the nature of commerce or business. The Tribunal, thus, overruled all three objections of the Assessing Officer and held that the interest income was exempt under

1 [2010] 328 ITR 362 (Bom)

Section 11 of the Act.

4. Having heard the learned counsel for the parties, we do not find any error in the view of the Tribunal. Section 2(15) of the Act defines term "charitable purpose" as to include activities such as relief of the poor, education, medical relief etc., and also "advancement of any other object of general public utility". Proviso to Section 2(15) of the Act provides that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commere or business,or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration provided the same is not excluded by virtue of clauses (i) and (ii) of the proviso with which we are not concerned. In the present case, the main object of the assessee club as noted above is to provide golf facilities to the members for promotion of the sport. The Tribunal correctly held that there was no element of the assessee's activity being in the nature of trade, commerce or business. Once the applicability of the proviso to Section 2(15) of the

Act is ruled out, the question of the exemption under Section 11 of the Act would arise.

5. Clause (a) of sub-section (1) of Section 11 provides that subject to the provisions of Sections 60 to 63, the income derived from the property held under trust wholly for charitable or religious purposes to the extent to which such income is applied to such purposes shall not be included in the total income of the previous year of the person in receipt of the income. In the present case, as recorded by the Tribunal, the assessee had invested its surplus funds in specified deposits earning interest which reduced the assessee's loss. In terms of sub-section (1) of Section 11 of the Act, therefore, such income was exempt from tax. The Tribunal, therefore, correctly granted relief to the assessee. No question of law arises.

6. Before closing, we may record that we have not based our reasoning of the principle of mutuality and therefore, the question of applicability of the decision of the Bombay High Court in case of Common Effluent Treatment Plant (Supra) need not be gone into. In the said case, the assessee was an Association incorporated under the Companies Act, 1956. The members of the Association were industries operating in Thane-Belapur regime. The assessee was set up to provide common treatment facility for industrial effluent. The assessee therein was thus not a trust and therefore, question of applicability of Section 11 of the Act to its income was not the subject matter of examination.

7. In view of the above, the appeal is dismissed.

[SARANG V. KOTWAL, J.] **[AKIL KURESHI, J]**