

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'जी', मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI

सर्वश्री राजेन्द्र, लेखा सदस्य, एवं, राम लाल नेगी न्यायिक सदस्य के समक्ष

BEFORE SHRI RAJENDRA, AM AND SHRI RAM LAL NEGI, JM

आयकर अपील सं./ITA No.433/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2010-11)

The Dy. CIT- 1(3)(2), Room No. 564, 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai- 400 020.	Vs.	M/s. The Wodehouse Gymkhana Ltd, 182, Maharshi Karve Road, Colaba, Mumbai- 400 021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACT4146R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri. Jeevraj P. Jain
निर्धारिती की ओर से /Assessee by : Shri. Vivek Perampurna

सुनवाई की तारीख / **Date of Hearing** : **02/08/2016**

घोषणा की तारीख/**Date of Pronouncement** : **02/08/2016**

आदेश / O R D E R

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against order dated 28/10/2014 passed by the Ld. CIT (Appeals)-2, Mumbai for the assessment year 2010-11.

2. The revenue has challenged the impugned order on the following effective grounds:-.

(i) *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing carry forward of losses claimed by assessee ignoring the fact that under the principle of mutuality followed by the assessee for claiming receipts exempt from tax there can be no income chargeable to tax and consequently no loss assessable which can legally be allowed to be carried forward ?”*

(ii) *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was justified in allowing carry forward of losses claimed by assessee ignoring the fact for an organization governed by mutuality there are no profits or losses but only receipts and payments and, any surplus of expenses over receipts is only a deficit and not “losses” which, if so claimed, would amount to an accounting camouflage only.”*

3. At the outset, the Ld. Counsel for the assessee submitted that the tax effect in this case is below Rs. 10,00,000/- Hence, as per the CBDT Circular No. 21 of 2015, dated 10/12/2015, the present appeal is not maintainable.

4. The Ld. DR fairly admitted that the tax effect in department’s appeal is below Rs. 10 Lakhs, We find that the issue raised in appeal does not fall under any of the exceptions specified in para 8 of the Circular. Since, it has been specifically clarified in the Circular aforesaid that the instruction will apply retrospectively to all the pending appeals; the present appeal filed by the revenue is not maintainable. We, therefore, dismiss the same *in limine*.

Order pronounced in the open court on 2nd August, 2016

Sd/-
(RAJENDRA)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 02/08/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila