

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**BEFORE SHRI P. K. BANSAL, VICE PRESIDENT AND
SHRI GEORGE GEORGE K., JUDICIAL MEMBER**

ITA No.568/COCH/2014

Assessment Year:2006-07

Regional Sports Centre, Elamjulam Road, Kadavanthara, Kochi. PAN:AAATR 8832 M	Vs	Jt. Director of Income Tax (OSD) (Exemptions), Range-4, Kochi.
(Appellant)		(Respondent)

ITA No.74/COCH/2015

Assessment Year:2006-07

A.C.I.T. (Exemptions), Kochi.	Vs	Regional Sports Centre, Elamjulam Road, Kadavanthara, Kochi. PAN:AAATR 8832 M
(Appellant)		(Respondent)

Assessee by	Shri R. Krishna Iyer, C.A. Smt. Parvathy Anand, C.A.
Revenue by	Shri A. Dhanaraj, Sr. D. R.
Date of hearing	03/10/2017
Date of pronouncement	05/10/2017

ORDER

PER P. K. BANSAL, V.P.

These cross appeals arise out of the order of CIT(A) dated 19/09/2014.

2. The only issue involved in these appeals relates to the sustenance of action of the Assessing Officer by CIT(A) taking the membership fee of Rs.37,66,300/- as revenue income while the only issue involved in

Revenue's appeal relates to the deletion of addition of Rs.64,33,000/- made by the Assessing Officer as the loan amount no longer payable as income of trust and deleted by the CIT(A).

3. The facts of the case, in brief, are that the assessee is charitable institution registered under section 12A of the Act. The return for the impugned assessment year was filed on 31/10/2006 declaring nil income. The assessment was completed under section 143(3) of the Act on nil income showing excess application at Rs.19,76,692/-. Subsequently, the assessment was reopened by recording the following reasons:

"On verification of the assessment records for the A.Y. 2006-07, it was seen that the assessee had received an income of Rs.73,92,431/- (including interest of Rs.9,59,431/-) being a loan amount, which has become no longer payable due to Government's decision to write off the liabilities towards Timber loan and loan from HUDCO. The assessing officer only treated the interest portion of Rs.9,59,431/- as income. As per the taxation of provision of charitable trusts u/s 11 of the I.T. Act., the income derived and application of income include both capital and revenue nature. As such Rs.64,33,000/- is also real income of the assessee during the A.Y. 2006-07. The 'assessee' had received an income of Rs.37,66,300/- by way of entrance fee. This income was shown as addition to capital fund in the balance sheet. Since the entrance fee form part of one of the major collection of the institutions and since this income is not forming part of the corpus of the trust, the same will be real income of the assessee."

The copy was supplied to the assessee vide letter dated 10th May, 2011. Subsequently, the assessment under section 143(3) read with section 147 was completed on 31/10/2011 at an income of Rs.71,58,580/- by making an addition of Rs.64,33,000/- being the loan amount no longer payable as the income of the trust, addition of Rs.37,66,300/- being the membership fees received and made addition on account of interest on loan at Rs.9,59,431/- waived in the original assessment. The assessee went in

appeal before the CIT(A) challenging the reopening as well as the additions made by the Assessing Officer. The CIT(A) held the reopening to be valid but deleted the addition of Rs.64,33,000/- and confirmed the addition of Rs.37,66,300/-.

The only issue involved in assessee's appeal relates to the sustenance of addition of Rs.37,66,300/-, which was received by the assessee by way of entrance fees during the impugned assessment year from following members:

(i)	Life Members	Rs.31,50,000.00
(ii)	Temporary Members	Rs. 3,76,300.00
(iii)	Ordinary Members	Rs. 2,40,000.00

The assessee contended that this amount is a capital receipt and it is only the subscription fees which has to be taken as revenue receipt and accordingly credited to the income and expenditure account. The Assessing Officer rejected the plea of the assessee and treated the sum of Rs.37,66,300/- as the income of the trust forming part of the income. When the matter went before the CIT(A), the CIT(A) confirmed the order of the Assessing Officer.

4. We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. We have also gone through the decisions relied on by learned A.R. Before us learned A.R. relied on the decision of Bombay Tribunal in the case of Malabar Hill Club and Others vs. ACIT, Range-5(2), Mumbai 2015 (9) TMI 448 –ITAT Mumbai. We noted from the copy of the decision dated 26/08/2015 that the issue before the Tribunal was relating to the entrance fees received by the assessee club from the life members, whether it is a capital receipt or revenue receipt. We noted that the Tribunal in the decision took the

view that the entrance fees received by the assessee from the life members is the capital receipt following the decision of Hon'ble Bombay High Court in the case of CIT vs. W.I.A.A. Club Ltd. [1982] 136 ITR 569 (Bom). We have also gone through the decision of Hon'ble Bombay High Court in the case of CIT vs. W.I.A.A. Club Ltd. (supra) and noted that in this case the issue before the Hon'ble High Court was whether the entrance fees received by the club from the ordinary members and the life members was a capital receipt or revenue receipt. The facts involved in that case was that the assessee club had various categories of members including ordinary members and life members. Under the articles of association of the club entrance fees were payable by ordinary members and life members of such respective amounts as may be determined by the executive committee. During the assessment years in question the entrance fees for ordinary members was Rs. 500 and for life members it was Rs. 2,500. An ordinary member had to pay an annual subscription but the life member had no liability to pay any annual subscription. The Assessing Officer split up the fees paid by life members and held that Rs.2,000/- out of Rs.2,500/- paid by them was consolidated annual subscription assessable as income. When the matter travelled to the High Court, Hon'ble held as under:

"That the rights and privileges which were enjoyed by the life members and ordinary members was the same and if for the purposes of enjoying these rights and privileges the ordinary members had to pay not only entrance fees but also annual subscription, it was obvious that when the articles of association of the assessee-club required the life members to pay a larger amount which was described as entrance fees, it was intended to commute the amount of annual subscription which a life member would otherwise be required to pay. The amount paid by life members styled entrance fees had two elements in it. A part of the amount paid partook of the nature of entrance fees which was paid to the club with a view to acquiring the right to avail of the services and facilities

extended by the club. The other part was a consolidated commuted payment in lieu of annual subscription. That part of the entrance fees which was a compounded payment for annual subscription would be income and the balance would be a capital receipt. In respect of the assessment years 1963-64 and 1964-65, out of the amounts received on account of entrance fees from life members, Rs. 500 should be treated as capital receipt and the balance of Rs. 2,000 should be treated as the income of the assessee. In case an ordinary member became a life member on payment of Rs. 2,000, the entire amount of Rs. 2,000 should be treated as the income of the assessee. In case the widow of a life member became a life member on payment of Rs. 500, a sum of Rs. 150 out of this amount of Rs. 500 should be treated as capital receipt and the balance of Rs. 350 as the income of the assessee."

4.1 We noted subsequent to the decision of Hon'ble Bombay High Court, the similar issue has come before Hon'ble Patna High Court in the case of CIT vs. United Club [1986] 161 ITR 853 (Pat). Hon'ble Patna High Court in the said decision has taken the view that the entrance fees paid by the members is of revenue nature. We noted that Hon'ble Patna High Court while holding so relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Calcutta Stock Exchange Association Limited [1959] 36 ITR 222 and that of Delhi Stock Exchange Association Limited vs. CIT [1961] 41 ITR 495 in which the company charged fees for admission of the members and their authorized assistant. The trading member had to be created and pay entrance fees and they along with their authorized assistant could transact business in stock and shares in the company. Under these facts, the question before the court was whether the admission fees received by the assessee company was taxable in the hands of the company. Under those circumstances their Lordships of Hon'ble Supreme Court took the view that the amount of admission fees were taxable. We also noted that under para 10 of the decision of Hon'ble Patna High Court, the Hon'ble High Court has duly considered the decision of Hon'ble Bombay High Court in the case of CIT vs. W.I.A.A.

Club Ltd. (supra). We noted that Hon'ble Bombay High Court and the Tribunal while deciding the issue that the entrance fees is a capital receipt did not consider the decision of Hon'ble Supreme Court cited above. Before us, even though learned A.R. vehemently relied on the decision of Hon'ble Bombay High Court as well as the Tribunal but has not brought out before us the rules of the assessee for making the members, whether the rights of each member i.e. the life member, temporary member and ordinary member are similar, whether they get similar privileges, has not been brought on record. Rather it was submitted that the contribution towards the membership is non refundable and therefore, it is a capital receipt. We, therefore, in the interest of justice and fair play to both the parties, set aside this issue and restored to the file of the Assessing Officer with the direction that the Assessing Officer should examine this issue afresh after discussing the decision of Hon'ble Supreme Court in the case of CIT vs. Calcutta Stock Exchange Association Limited (supra) and that of Delhi Stock Exchange Association Limited vs. CIT (supra) and decide this issue afresh in accordance with the law. Thus, the appeal of the assessee is allowed for statistical purposes.

I.T.A.No.74/Coch/2015

5. Now coming to the appeal filed by the Revenue, we noted the only issue, involved in the various grounds taken, relates to the deletion of addition of Rs.64,33,000/-. We noted that the CIT(A) has deleted the said addition which relates to writing off of the loan liability as the same has been considered by the Assessing Officer in the original assessment and after giving definite finding the Assessing Officer has treated this amount as not taxable in the hands of the assessee and hence the Assessing Officer is not right in law in changing his opinion and bringing this amount to tax in 147 proceedings. The CIT(A) has not gone on to

the merit whether the addition has to be sustained or deleted. This is a fact that this addition has been considered by the Assessing Officer during the course of the original assessment and he took the view that this amount is not taxable in the hands of the assessee. We may mention that this is a case where the assessment has been reopened by recording the following reasons:

"On verification of the assessment records for the A.Y. 2006-07, it was seen that the assessee had received an income of Rs.73,92,431/- (including interest of Rs.9,59,431/-) being a loan amount, which has become no longer payable due to Government's decision to write off the liabilities towards Timber loan and loan from HUDCO. The assessing officer only treated the interest portion of Rs.9,59,431/- as income. As per the taxation of provision of charitable trusts u/s 11 of the I.T. Act., the income derived and application of income include both capital and revenue nature. As such Rs.64,33,000/- is also real income of the assessee during the A.Y. 2006-07. The 'assessee' had received an income of Rs.37,66,300/- by way of entrance fee. This income was shown as addition to capital fund in the balance sheet. Since the entrance fee form part of one of the major collection of the institutions and since this income is not forming part of the corpus of the trust, the same will be real income of the assessee."

Among the various reasons, one of the reason relates to the sum of Rs.64,33,000/-. In addition to this, there are two more reasons. Had this been the only reason, the reopening could have been held to be invalid in view of the change of opinion. The doors of the Assessing Officer are not closed to make the addition which in the original assessment order he brings on record fresh tangible material and was of the opinion that the addition cannot be made. We do agree with the learned A.R. that the assessment cannot be reopened where the matter has been concluded in the original assessment and the assessment has been reopened in respect of the same issue. This is a case where the assessment has been

reopened not only for the sum of Rs.64,33,000/- but also in respect of the entrance fees amounting to Rs.37,66,300/- and interest on loan amounting to Rs.9,59,431/-. In the absence of any fresh tangible material being brought on record by the Assessing Officer, in our opinion, the Assessing Officer will be reviewing his original order passed under section 143(3). Section 147 of the Act does not give such power to the Assessing Officer. Before considering this issue during the course of the reassessment proceedings, the Assessing Officer has to fulfill the ingredients of section 147 as the Assessing Officer's jurisdiction under section 147 is only confined to such income which has escaped assessment. It does not extent to reconsidering generally the concluded earlier assessment. We, therefore, do not find any illegality or infirmity in the order of CIT(A) while deleting the addition of Rs.64,33,000/-. Thus, the appeal of the Revenue stands dismissed.

6. In the result, the appeal of the assessee is allowed for statistical purposes and that of the Revenue is dismissed.

(Order pronounced in the open court on 05/10/2017)

Sd/
(GEORGE GEORGE K.)
Judicial Member

Sd/
(P. K. BANSAL)
Vice President

Dated:05/10/2017
***Singh**

Copy of the order forwarded to :

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
5. D.R., I.T.A.T., Cochin

Asstt. Registrar