THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 300/Hyd/2018
Assessment Year: 2014-15

The Gujarati Social Welfare Society, Hyderabad.	vs.	Income-tax Officer, Ward - 5(3), Hyderabad.

PAN – AAATT 4827A

(Appellant) (Respondent)

Assessee by : Shri S. Rama Rao

Revenue by : Shri Nilanjan Dey

Date of hearing : 31-10-2018
Date of pronouncement : 15-11-2018

O R D E R

PER S. RIFAUR RAHMAN, A.M.:

This appeal of the assessee is directed against the order of CIT(A) – 4, Hyderabad, dated 30/11/2017 for AY 2014-15.

2. Brief facts of the case are, the assessee, a mutual benefit society, filed its return of income for the AY 2014-15 on 30/09/2014 admitting NIL income by claiming that the income earned is exempt from tax on the principle of mutuality. Subsequently, the case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued and the assessment u/s 143(3) was completed by the AO on 23/12/2016 by making an addition of Rs. 31,90,148/- towards income from other sources.

2.1 In the return of income filed by the assessee, the assessee had claimed excess of income over expenditure which was of Rs. 1,06,23,856/- as exempt and filed a Nil return stating as under:

"The assessee is a Mutual benefit society which came into existence with effect from April, 1984. The activities of the society are confined to the members of the society. The accounts of the society have duly been audited by a Chartered Accountant. The Balance Sheet, Income and Expenditure account for the year ended 31.03.2014 have been prepared and certified by the Chartered Accountant. The excess of income over expenditure as per the statement is Rs.1,06,23,856/-. The income is exempt as it is a Mutual benefit society. Hence, a NIL return is filed and the income of Rs.1,06,23,856 is claimed exempt':

2.2 The Assessing Officer observed that the assessee is registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 in the office of the Registrar of Societies, Andhra Pradesh, Hyderabad on 3rd July, 2005 with the name of "The Gujarati Social Welfare society". He further observed that though the society is a mutual benefit society, it is seen from the Income & Expenditure that the income of the assessee includes the interest from, bank is of Rs.31,90,148/-. In this regard, when the assessee asked to explain as to why the interest income of Rs.31,90,148/- is not be treated as 'income from other sources', vide its letter, the assessee, inter-alia, stated that it is formed with no profit motive and no commercial activity is involved in its working and to promote and encourage economic and social betterment of its members through thrift self-help and mutual aid with the principle of cooperation.

2.3 The AO rejected the submissions of the assessee and following the decision of the CIT(A) - 4, in assessee's own case for AY 2012-13 as well as the decision of Hon'ble High Court in the case of CIT Vs. M/s Secunderabad Club, Picket, Secunderabad in ITTA Nos. 422,443,529 to 533 of 2006, 78 and 81 of 2007 and 244 of 2010 and the decision of the Hon'ble Supreme Court in the case of CIT Vs. M/s Bangalore Club, 350 ITR 509, held that since the assessee society had no explanation to offer in view of the above judicial decision, treated the interest earned from bank of Rs. 31,90,148/- as income from other sources and added to the returned income.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) confirmed the addition made by the AO.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

> *1) The Order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.*
>
> *2) The learned Commissioner of Income-Tax (Appeals) erred in holding that the interest received from the banks of Rs. 31,90,148 is not exempt on the principles of mutuality.*
>
> *3) Any other ground that may be raised at the time of hearing."*

5. Considered the rival submissions and perused the material on record. The issue in dispute is squarely covered by the decision of the coordinate bench of this Tribunal in assessee's own case for AY 2012-13 (supra), against the assessee, wherein the coordinate bench held as under:

> *" 6. I have considered the rival contentions and perused the orders of the authorities. There is no dispute that assessee is allowed the benefit of mutuality to the extent of incomes earned amongst the members. The issue is with reference to the interest earned from the bank which is not a member of the Society. The Hon'ble Supreme Court in the case of CIT Vs. Bankipur Club Ltd., [226 ITR 97] (supra) has considered the principles of mutuality and the activity of trading and held as under:*
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> *"Under the Income-tax Act, what is taxed is, the "income, profits or gains" earned or "arising", "accruing" to a "person". Where a number of persons combine together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to those persons cannot be regarded in any sense as profit. There must be complete identity between the contributors and the participators. If these requirements are fulfilled, it is immaterial what particular form the association takes. Trading between persons associating together in this way does not give rise to profits which are chargeable to tax. Where the trade or activity is mutual, the fact that, as regards certain activities, certain members only of the association take advantage of the facilities which it offers does not affect the mutuality of the enterprise.*
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> *The decisions of the Supreme Court in CIT v. Royal Western India Turf Club Ltd. [1953] 24 ITR 551 ; CIT v. Kumbakonam Mutual Benefit Fund Ltd.,*

[1964] 53 ITR 241 and Fletcher (on his own behalf and on behalf of Trustees and Committee of Doctor's Cave Bathing Club) v. ITC [1971] 3 ALL ER 1185 (PC) lay down the broad proposition 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 realised both from the members The Gujarati Social Welfare Society 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. In other words, the activity carried on by the assessee in such cases, claiming to be a "mutual concern" or "members' club" is a trade or an adventure in the nature of trade and the transactions entered into with the members or non-members alike is a trade/business/transaction and the resultant surplus is profit- income liable to tax. At what point the relationship of mutuality ends and that of trading begins is a difficult and vexed question. A host of factors may have to be considered to arrive at a conclusion. "Whether or not the persons dealing with each other, are a "mutual club" or carrying on a trading activity or an adventure in the nature of trade", is largely a question of fact.

The main question canvassed by the Revenue in the appeals coming under groups A to D, the assessees being Bankipur Club Ltd., Ranch Club Ltd., Cricket Club of India and Northern India Motion Pictures Association, was whether the assessee-mutual clubs, were entitled to exemption for the receipts or surplus arising from the sales of drinks, refreshment, etc., or amounts received by way of rent for letting out the buildings or amounts received by way of admission fees, periodical subscriptions and receipts of similar nature from its members. In all these cases, the Tribunal as also the High Court had found that the amounts received by the clubs were for supply of drinks, refreshments or other goods as also the letting out of building for rent or by way of admission fees, periodical subscription, etc., from the members of the clubs were only for/towards charges for the privileges, conveniences and amenities provided to the members, which they were entitled to, as per the rules and regulations of the clubs. It had also been found that different clubs realised various sums on the above counts only to afford to their members, the usual privileges, advantages, conveniences and accommodation. In other words, the services offered on the above counts were not done with any profit motive, and were not tainted with commerciality. The facilities were offered only as a matter of convenience for the use of the members (and their friends, if any, availing of the facilities occasionally).

Held, dismissing the appeals, that in the light of the findings of fact the receipts for the various facilities extended by the clubs to its members, as part of the usual privileges, advantages and conveniences, attached to the membership of the club, could not be said to be "a trading activity." The

surplus-excess of receipts over the expenditure-as a result of mutual arrangement, could not be said to be "income" for the purpose of the Act.

By THE COURT : The above four sets of cases falling in groups A to D shall alone be covered by this judgment. With regard to seven cases/appeals falling in group E, the assessee is the Cawnpore Club Ltd.

The Gujarati Social Welfare Society It is seen that the income that was sought to be assessed in the case of the assessee, was one derived from property let out and also interest received from F. D. R., N. S. C., etc. Since the issue raised in this batch of seven cases, is not similar to, or the same as the one involved in the other cases coming under groups A to D, the court directed these cases falling in group E to be posted separately for hearing and disposal before an appropriate Bench.

Decisions of the Patna High Court in CIT v. BANKIPUR CLUB LTD. [129 ITR 787 (Patna) and CIT v. RANCHI CLUB LTD. [1992] 196 ITR 137 (Patna) [FB] affirmed".

7. Even though the Hon'ble Supreme Court did not decide the issue of interest earned on Fixed Deposits in the above said judgment, subsequent judgments have clearly established that the interest received from non-members does not come within the purview of mutuality.

8. The Hon'ble jurisdictional High Court in the case of CIT Vs. 1. Secunderabad Club, Picket; 2. Armed Forces Officers' Co-operative Housing Society Ltd., [340 ITR 121] (AP) has clearly adjudicated that the nature of transaction between assessee and banks would disqualify application of principle of mutuality. It was held that interest earned was taxable. The judgment of the Hon'ble jurisdictional High Court in the above said case is as under:

"If complete identity between the contributors and the participants or recipients is established the surplus generated and returned to the contributors is not regarded as profit for the purpose of charging income-tax. If the persons carry on an activity, which is also trade, in such a way that they and the customers are the same persons, no profits are yielded by such trade for tax purposes and, therefore, no assessment in respect of the trade can be made. The surplus resulting from trading represents such contributions of the participants which is in excess of the requirements. Access to profits or services is a condition precedent to satisfy the element of mutuality. Even when the aggregate of the members are incorporated, the effect of the principle is not lost. When a company itself becomes a member of a club to the extent of making contribution it is responsible, but :- 7 -: I.T.A. No. 247/Hyd/2016 The Gujarati Social Welfare Society when it comes to participation and availment of facilities and privileges it is not the juridical person but it is only the nominated officers of the company who do

so. There is thus a discernible factor which takes away the nexus between contribution and participation. There is also a dichotomy between the juridical personality who contributes to the club, and the nominees (who can be changed) who actually avail of facilities and receive benefits from the club activities. An important facet of the principle of mutuality is not only the identity of the contributors of, and the recipients from, the fund, but also the right to be returned the contribution in the event of the aggregate of members getting dissolved. If the continuance of the original contributors till the end or till the achievement of the objects for forming the association or society/club is uncertain, the principle of mutuality ceases to apply.

When a person deposits money in a bank, the relationship is that of creditor and debtor, and they would be bound by the contract that regulates the deposit and payment of interest thereon. When a club deposits its funds with a bank, the latter does not treat the club any differently from its other depositors, nor is a higher rate of interest offered.

The assessee was a social and recreational club. It was not registered either as an association or a society. It was a mutual association and not a profit making concern. None of its activities was tainted with commerciality or business modalities. The assessee received monthly subscriptions, admission fee and payments from its members for use of club facilities. During the assessment year 1996-97, the assessee earned interest on fixed deposits kept by it with certain banks and financial institutions. The banks and financial institutions with whom the fixed deposits were made were corporate members of the club. The return for the year 1996-97, admitting Rs. 1,22,700 was accepted under section 143(1) of the Income-tax Act, 1961. However, the Assessing Officer issued notice under section 148 of the Act on the ground that the exemption claimed with regard to the interest on fixed deposits from banks/companies was not a valid claim. Accordingly, the Assessing Officer added the interest on deposits and assessed it to tax. The Tribunal held that the interest income earned by the assessee on the deposits made by its corporate members was not liable to be taxed. On appeal to the High Court:

Held, that the rules of the club showed that there was a difference between ordinary or permanent members of the club on the one hand and corporate members on the other. It was only a member who would be entitled to proportionate amount in the event of liquidation, and it was the member who had the right to be elected to the committee of the club and a right to vote. In the case of a corporate member, the subscription was contributed by the juridical person whereas participation in the club activities was by a natural person nominated to participate and avail of :- 8 -: I.T.A. No. 247/Hyd/2016 The Gujarati Social Welfare Society the facilities of the club. A corporate member, according to the rules, had no right to be elected to the committee of the club nor entitled to as many votes as the number of its nominees. In the event of winding up, it was the permanent members who would have a

dominant role. The principle of mutuality ended the moment the club deposited the amount with the sole aim of earning interest on the deposits. Further, by depositing its funds with its corporate member banks, the club would certainly help increase the business of the bank. In that view of the matter, the corporate member bank was being shown a favour, and was not being provided a facility. The social relationship and social activities of the club had nothing to do with its deposits with the corporate members. The nature of the transaction between the assessee and the banks would disqualify application of the principle of mutuality. The interest earned was taxable".

8.1. In the above referred case of Secunderabad Club, the Hon'ble High Court has held even though the bank was having a corporate membership with the said club/society, the principle of mutuality does not arise. In assessee's case, the bank is not even a member of the society. The nature of the transaction between the assessee and the bank would disqualify application of the principle of mutuality. Therefore, the transactions with the bank who is not even a member of the society cannot be considered as a transaction for which principles of mutuality will apply. Not only on the principles laid down in the subject but also on the fact that the interest was received from a non-member, the principles of mutuality do not apply. The orders of the AO and CIT(A) are accordingly upheld both on facts as well as on principles of law. I find no merit in assessee's grounds and accordingly, the same are dismissed."

Since the issue under consideration is materially identical to that of assessee's own case for AY 2012-13, following the decision therein, we uphold the order of CIT(A) and dismiss the grounds raised by the assessee on this count.

6. In the result, appeal of the assessee is dismissed.

Pronounced in the open court on 15th November, 2018.

Sd/-	**Sd/-**
(P. MADHAVI DEVI)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated: 15th November, 2018.

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Copy to:-

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2) *ITO, Ward – 5(3), Hyderabad.*
3) *CIT(A) – 4, Hyderabad.*
4) *Pr. CIT – 4, Hyd.*
5) *The Departmental Representative, I.T.A.T., Hyderabad.*
6) *Guard File*