

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.6521/DEL/2013
Assessment Year: 2009-10**

**DDIT(E), Inv. Circle - 11,
New Delhi.**

**vs National Association of Software
and Services Company,
2nd Floor, International Youth Centre,
Teen Murti Marg, Chankyapuri,
New Delhi.
PAN: AAATN2595F**

(Appellant)

(Respondent)

**Assessee by: Shri Aajy Vohra, Sr. Advocate
Shri Gaurav Jain, Advocate
Department by: Ms Naina Soin Kapil, Sr.DR**

Date of Hearing: 28.8.2019

Date of Pronouncement: .9.2019

ORDER

PER NARASIMHA K. CHARY, JM

Challenging the order dated 13.9.2013 of the learned Commissioner of Income-tax (Appeals)-XXI, New Delhi {for short "Learned CIT(A)"} passed in Appeal No.241/2011-12, revenue preferred this appeal.

2. Briefly stated facts are that the assessee, National Association of Software and Service Companies (NASSCOM), is the premier trade body and the chamber of commerce of the IT-BPO industries in India; that the

assessee was set up in 1988 is a non profit organisation registered under the Societies Registration Act, 1860 and also u/s 12A of the Income-tax Act, 1961 ("the Act"); that it aims to drive the overall growth of the technology and service market and maintain India's leadership position by taking up the role of a strategic advisor to the industry.

3. For the Asstt. Year 2009-10, they have filed their return of income on 25.9.2009 declaring nil income. Learned AO, however, during the course of assessment proceedings, observed that there is variance in the fee received from the members. Assessee had received fee from non-members also and has been dealing with both the members and non-members. He, therefore, denied exemption u/s 11 of the Act and assessed their income at Rs.9,04,40,180/-.

4. Aggrieved by the said addition and denial of deduction u/s 11 of the Act, assessee preferred appeal. Learned CIT(A) by way of the impugned order uphold the contentions of the assessee that the assessee is governed by the principle of mutuality and, therefore, any variance in the subscription fee or voting rights are relevant while claiming exemption under the principle of mutuality. They have placed reliance on the decisions reported in (i) CIT vs Merchant Navy Club, 96 ITR 261 (AP); (ii) CIT vs Bankipur Club Ltd., 226 ITR 97 (SC); (iii) Chelmsford Club vs CIT, 243 ITR 89 (SC); (iv) Sports Club of Gujarat Ltd. vs CIT, 171 ITR 504 (Guj); (v) CIT vs Delhi Race Club, 196 ITR 777 (Del); (vi) Ranchi Club Ltd. vs CIT, 196 ITR 137 (Patna); and (vii) CIT vs National Sports Club of India, 230 ITR 777 (Del).

5. Learned CIT(A) considered submissions of the assessee in the light of the law settled in the decisions relied upon by the assessee and reached a conclusion that the membership fee received by the assessee comes within the principle of mutuality and as such the net income of the assessee from its own members is exempt from tax. Learned CIT(A) held his conclusions are justified by the case laws.

6. Revenue, therefore, filed this appeal stating that the assessee has been rendering services in relation to trade, commerce or business in lieu of some fees from members as well as non members and has been involved in business and commercial activity to which provisions of Section 28(iii) of the Act are applicable.

7. It is the submission of the learned DR that during the year under consideration, the assessee received fee from both its members and non members, offered income for taxation on the fee received from non members but claimed exemption on the income from receipts received from members based on the principle of mutuality but Id. AO is justified in denying exemption on the basis of violation of principle of mutuality since Id. AP on facts held that the case falls under the purview of Section 2(15) of the Act, which was brought through Finance Act, 2008. It is further submitted by her that the factual finding of the Id. AO is that the surplus was generated through all the activities which was invested in FDRs and saving accounts and, therefore, no charity was being done by the assessee. According to her, the membership fee and admission fee charged from the members clearly fall under the provisions of Section 2(15) of the Act. Lastly, Id. DR contended that the difference in annual subscription fee, different types of members with different fee,

differential voting rights depending on the turnover etc. Takes away the case from the nature of charitable purpose and the Id. AO is justified in denying the benefit of Section 11 to the assessee. Learned DR placed reliance on the decision reported in the case of CIT vs Secunderabad Club Picket, (2012) 340 ITR 121(AP) wherein it was held that the principle of mutuality ended the moment the club deposited the amount with the sole purpose of earning interest on the deposits.

8. Per contra by placing reliance on the decisions reported (i) CIT vs Merchant Navy Club, 96 ITR 261 (AP); (ii) CIT vs Bankipur Club Ltd., 226 ITR 97 (SC); (iii) Chelmsford Club vs CIT, 243 ITR 89 (SC); (iv) Sports Club of Gujarat Ltd. vs CIT, 171 ITR 504 (Guj); (v) CIT vs Delhi Race Club, 196 ITR 777 (Del); (vi) Ranchi Club Ltd. vs CIT, 196 ITR 137 (Patna); and (vii) CIT vs National Sports Club of India, 230 ITR 777 (Del), learned AR submitted that the variance in the types of membership, variance in subscription fee and the variance in the voting rights is an irrelevant consideration while deciding the issue relating to the exemption under the principle of mutuality despite the entity dealing with members and non members, it would not lose its character u/s 2(15) of the Act and the assessee is governed by the principle of mutuality. He supported the conclusion reached by the Id. CIT(A) basing on the above case law, which was also submitted before the Id. CIT(A).

9. It is not in dispute that the income of the assessee is received from members as well as non members. The income from the non members has been offered to tax by the assessee whereas membership fee from its own members is claimed as exempt on the principle of mutuality. Ld. CIT(A) held that the assessee being a trade association of software

industries, its main object being to promote and protect the interest of its members, membership received from its own members comes within the principle of mutuality. To this extent, it does not admit any doubt and the catena of decisions relied upon by the assessee hold so.

10. In so far as the objection of the Id. AO based on the variance in the subscription fee and variance in voting rights is concerned, in ITO vs Venkatesh Premises Cooperative Society Ltd., 402 ITR 670 (SC), the Hon'ble Apex court held that so long as the membership forms a class, the identity of individual member is irrelevant and any difference in the contributions payable by the members cannot fall foul of the law as sufficient classification exists. In CIT vs Hindustan Sports Club (supra), the Hon'ble Bombay High Court held that once the assessee is governed by the principle of mutuality, even if there are difference class of members, some of whom are not entitled to vote, the club would not be cease to be governed by principle of mutuality. In Ranchi Club (supra) and Standing Conference of Public Enterprises (supra), it is held that merely because the assessee had entered into transactions with non members and earned profits out of transactions held with them, it is right to claim exemption on the principle of mutuality in respect of transactions held by it with its members is not lost. The principle of establishing identity between the contributors and participators would apply only in respect of contributions made by the members. Hon'ble court concluded that the assessee being a mutual concern, the income derived from the property let out to its members and their guests and sale of liquor etc. to its members would not be taxable.

11. In this case, as already stated, the assessee had offered to tax the income derived from the receipts from the non members. In so far as the members are concerned, there is no dispute as to the identity between the contributors and the participators.

12. During the course of arguments, the question as to the way of disposal of the funds, if any, had arisen and by placing reliance on the decision in the case of Bankipur Club Ltd. (supra), Id. AR submitted that in that case also vide clause 7 of the Memorandum of Association, it was provided that upon winding up and dissolution of the association, the remaining property after the satisfaction of its debts and liabilities, shall not be paid or distributed amongst the members but shall be given or transferred to such other institution or institutions having similar objects to be determined by the members at or before the time on dissolution. On this aspect, the Hon'ble Apex court referred to the decision of the Hon'ble P&H High Court in the case of CIT vs Northern India Motion Pictures Association (1989) 180 ITR 160 to the effect that it is for the contributors to deprive themselves of the control on the disposal of the surplus and they could agree to divide the surplus amongst themselves and contribute the amount to a similar association or to a charitable trust, still the assessee will be a mutual benefit association and its income is not taxable. This aspect also, therefore, stands covered by the judicial precedent and does not admit of any fresh discussion.

13. For the above reasons, we concur with the findings of the Id. CIT(A) that the case law relied upon by the Id. AR supports the view taken by the Id. CIT(A) on the aspect of principle of mutuality and the entitlement of the assessee to claim the benefit of Section 11 of the Act.

We, therefore, uphold the same and find the grounds of appeal as devoid of merits.

14. In the result, appeal of the revenue is dismissed.

Order Pronounced in the open court on 20th September, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(K.NARASIMHACHARY)
JUDICIAL MEMBER**

Dated: 20th September, 2019
VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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