

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 2084/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

PYC Hindu Gymkhana,  
766, Bhandarkar Road,  
Shivajinagar,  
Pune-411 004  
PAN : AAATP1121F

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
(Exemption) Circle, Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 2272/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

The Deputy Commissioner of Income Tax,  
(Exemption) Circle, Pune.

.....अपीलार्थी / Appellant

**बनाम / V/s.**

PYC Hindu Gymkhana,  
Vinchekar Pavalion,  
Deccan Gymkhana,  
Shivajinagar,  
Pune-411 004  
PAN : AAATP1121F

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar  
Revenue by : Shri Hoshang B. Irani

सुनवाई की तारीख / Date of Hearing : 13.11.2019

घोषणा की तारीख / Date of Pronouncement : 13.11.2019

### **आदेश / ORDER**

#### **PER PARTHA SARATHI CHAUDHURY, JM :**

These cross appeals preferred by the assessee and Revenue emanates from the order of the Ld.CIT(Appeals), Pune-10 dated 28.07.2017 for assessment year 2013-14 as per the grounds of appeal on record.

2. These cases were heard together. Since facts common and issues are similar, these cases are being disposed of vide this consolidated order.

3. At the very outset, the Ld. AR of the assessee appraised the Bench that in these cross appeals, issues pertains to the claiming of exemption u/s.11 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') so far as the assessee is concerned and there is a ground on "Principle of Mutuality" in the Revenue's appeal.

4. That further, the Ld. AR of the assessee submitted that in earlier occasion for assessment year 2010-11 in assessee's own case in ITA Nos.179/PUN/2015 and 187/PUN/2015, these issues which are the main issues have been remitted back to the file of the Assessing Officer. That also in ITA No.179/PUN/2015 pertaining to MA No.94/PUN/2018, one ground remains un-adjudicated in the first round and the prayer of the Ld. AR is that since main issue i.e. "Principle of Mutuality" and the exemption u/s.11 of the Act were remitted back to the file of Assessing Officer, similarly, the additional ground was also sent back by the Tribunal to the file of Assessing Officer. In this background, it was also prayed by the Ld. AR that for the present

assessment year i.e. A.Y. 2013-14 also, these cross appeals may be restored to the file of Assessing Officer for necessary adjudication as per law.

5. The Ld. DR fairly conceded to the argument put forth by the Ld. AR of the assessee.

6. We have perused the case records and heard the rival contentions. We have also considered the judicial pronouncements placed before us. We observe that in assessee's own case in ITA Nos.179/PUN/2015 for assessment year 2010-11, the issue regarding claim of exemption u/s.11 of the Act was remitted back to the file of Assessing Officer by the Tribunal by observing as follows:

*"16. It is the allegation of the AO that the assessee collected huge fee from the clients and the profit motive is the dominant one in charging such hefty fee in all these incidental activities of the Trust. With regard to these allegation/arguments of the Revenue relating to the profit motive, we find that the assessee reported earning of Rs.1.22 crores out of the gross receipts of Rs.3.83 crores (i.e. 32%). Although, prima-facie, the profit @32% is on higher side, there is no data on the profit percentage in the earlier and later years of the Trust. Further, there is no details on the appropriation of such huge profits too. Therefore, though the so called commercial activities are incidental to objects of the Trust, we find there is need for reading into the profit motive of the assessee with respect to the profits from such activities. Further, there is need for examining the appropriation of these funds from the perspective of the objects of the Trust too. For these reasons, the matter needs to be remanded to the file of the AO.*

*17. Further, from the legal perspective too, we would like to mention here that the activities of the Trust are favourably covered by the main provisions of section 2(15) of the Act and in favour of the assessee. However, the provisions of proviso to section 2(15) of the Act recognize the fact that in principle, such commercial activities can be undertaken by the Trust. The same is evident from the provisions of the proviso. However, the income earned from such activities may not exceed the specified limit of Rs.10 lakhs. What happens, if the said limit is exceeded, as in the case of the assessee, where the income earned out of profit motive is more than the specified limit of Rs.10 lakhs? Why did assessee earn such abnormal profits? Undisputedly, we find the same is not properly addressed by the AO/CIT(A) in their orders with the help of the facts and figures. Further, the CIT(A) hurriedly dismissed the relevant ground against the assessee merely stating that the activities of the Trust are commercial in nature. In principle, we do not agree with his finding. Therefore, in our opinion, these parts of the issue need to be remanded to the file of the AO for deciding (1) what exactly is the income relatable to the said incidental or auxiliary activities; (2) How they were utilized and what are the surplus after the utilization for the purpose of*

*the objection; (3) what is the history of the Trust so far as making of the profits over the years are concerned. AO should also examine, if the assessee is consistently making huge profits qua the other club in the country with similar objects. AO should also examine the consequences of exceeding the set limit of Rs.10 lakhs. With these remarks, we remand this part of the issue to the file of AO for fresh adjudication. AO shall grant reasonable opportunity of being heard to the assessee.”*

6.1 That further, on the issue of “Principle of Mutuality” in ITA No.187/PUN/2015 for assessment year 2010-11, the Tribunal held as follows:

*“26. On hearing both the representatives, we find that the issue of applicability of Principle of Mutuality to the excess profits of Rs.1.22 crores is linked to the excess earning of the Trust as well as the profit motive of the Trust. We dealt with this issue while adjudicating the Ground Nos. 1 to 5 along with the additional grounds raised by the assessee. While holding that the so called commercial activities constitute incidental activities to the objects of the Trust, we remanded the issue of ‘profit motive’, surplus funds and the related issues of exempt nature of such profit in view of the Principle of Mutuality, to the file of AO for want of facts and conclusions of the AO on these issues.*

6.2 That further in ITA No.179/PUN/2015 for assessment year 2010-11 in assessee’s own case, the Tribunal remitted the additional ground back to the file of Assessing Officer for adjudication by observing as follows:

*“4. We have perused the case records and heard the rival contentions. We observe that in the earlier occasion, the Tribunal had remanded the main issue regarding examination of ‘profit motive’, surplus fund and the related issues of exempt nature of such profit for examination in view of the “Principle of Mutuality” by the Assessing Officer. However, the additional ground filed before the Tribunal remained un-adjudicated and in the Miscellaneous Application filed by the assessee, the Tribunal had recalled its order for adjudication of this additional ground which remained un-adjudicated at the first round. The prayer of the Ld. AR is that since the main issue has to be examined by the Assessing Officer in the light of “Principle of Mutuality” as per direction of the Tribunal in the earlier round, similarly, the additional ground made also be remanded back to the file of the Assessing Officer for adjudication in totality. In our considered view, this argument is fair in the interest of justice and accordingly, we remand this additional ground to the file of Assessing Officer for adjudication in compliance with the principles of natural justice.”*

7. Therefore, in assessee’s own case, it could be seen that all the issues are remitted back to the file of Assessing Officer for adjudication as per law in

compliance with the principles of natural justice. In view of the totality of facts and circumstances and following the same parity of reasoning as rendered in assessee's own cases (supra.), we restore these cross appeals for assessment year 2013-14 and all the issues therein to the file of Assessing Officer with similar directions.

8. In the result, **appeal of the assessee in ITA No.2084/PUN/2017 and appeal of the Revenue in ITA No.2272/PUN/2017 for assessment year 2013-14 are allowed for statistical purposes.**

Order pronounced on 13<sup>th</sup> day of November, 2019.

Sd/-  
**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 13<sup>th</sup> November, 2019.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Pune-10.
4. The CIT(Exemptions), Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	13.11.2019	Sr.PS/PS
2	Draft placed before author	13.11.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		