

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI MAHAVIR SINGH, VICE PRESIDENT  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.5431/Mum/2019  
(Assessment Year :2014-15)**

M/s. Parsee Gymkhana C/o. Kalyaniwalla and Mistry LLP, 2 <sup>nd</sup> Floor, Esplanade House 29, Hazarimal Somani Marg Fort, Mumbai – 400 001	Vs.	Asst. Commissioner of Income Tax, Circle 18(2) Mumbai Room No.302, 3 <sup>rd</sup> Floor Earnest House Nariman Point Mumbai – 400 021
<b>PAN/GIR No.AAAP0177E</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri M.M. Golvala
Revenue by	Ms. Shreekala Pardeshi
<b>Date of Hearing</b>	<b>29/06/2021</b>
<b>Date of Pronouncement</b>	<b>01/07/2021</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M.):**

This appeal in ITA No.5431/Mum/2019 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-53, Mumbai in appeal No.CIT(A)-53/IT-376/ACIT-18(2)/2018-19 dated 18/06/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act)

dated 05/12/2016 by the Id. Asst. Commissioner of Income Tax 18(2), Mumbai (hereinafter referred to as Id. AO).

2. The only effective issue to be decided in the instant appeal is that whether the income of the assessee club would be taxable at maximum marginal rate u/s.167B of the Act or at slab rates applicable to Association Of Persons (AOP).

3. We have heard rival submissions and perused the materials available on record. We find that the assessee formed Members Club on 25/02/1885. The assessee is managing a Gymkhana namely "Parsee Gymkhana" located at New Marine Lines, Mumbai. The assessee filed its return of income for the A.Y.2014-15 on 24/07/2014 electronically declaring total income of Rs.1,36,86,560/- in the status of AOP wherein the tax rate was automatically picked up to be chargeable at maximum marginal rate by the income tax return filing software. The Id. AR pleaded that till A.Y.2010-11, where the returns were filed manually before the Income Tax department, the assessee club had been offering income to tax at slab rates applicable to AOP and which was accepted by the department. However, commencing from A.Y.2011-12 onwards, when electronic filing was made mandatory, once the status of the assessee is accepted as AOP, the Id. AR pleaded that the return filing software automatically taxes the income to be chargeable at maximum chargeable rate. The Id. AR also stated that in the A.Y.2014-15, assessment was completed u/s.143(3) of the Act wherein assessee was charged tax only at slab rates and provisions of Section 167B of the Act were not made applicable. Accordingly, the Id. AR pleaded that this appeal may be restored back to the file of the Id. AO to decide in light of assessment framed for the A.Y.2014-15 in the hands of the assessee. The Id. DR fairly

agreed to the said proposition of the Id. AO. Considering the facts of the case and arguments advanced hereinabove by the parties, we deem it fit to restore this issue to the file of the Id. AO for denovo adjudication in accordance with law.

**4. In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced on 01/07/2021 by way of proper mentioning in the notice board.

**Sd/-  
(MAHAVIR SINGH)  
VICE PRESIDENT**

**Sd/-  
(M.BALAGANESH)  
ACCOUNTANT MEMBER**

Mumbai; Dated 01/07/2021  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai