

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND  
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**ITA NOs. 200 & 201/MUM/2022  
(A.Ys: 2016-17 & 2017-18)**

ITO (Exemption) – 2(4) Room No. 609, 6 <sup>th</sup> Floor Cumballa Hill, MTNL Building Peddar Road, Dr. G.D. Marg Cumballa Hill, Mumbai - 40026	v.	The Andheri Recreation Club 1, Dadabhai Rod Near Bhavance college Andheri (W), Mumbai - 400058  <b>PAN: AAATT3379H</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Vimal Punmiya</b>
<b>Department by</b>	<b>:</b>	<b>Shri Mehul Jain</b>
<b>Date of Hearing</b>	<b>:</b>	<b>19.05.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>24.05.2022</b>

**ORDER**

**PER S. RIFAUH RAHMAN (AM)**

1. These appeals are filed by the revenue against different orders of the Learned Commissioner of Income Tax, National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 06.12.2021 for the A.Y. 2016-17 and 2017-18.

**2.** Revenue has raised following identical grounds for both the appeals

under consideration: -

*1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in granting relief to the assessee without considering the fact that the activities of the trust are being carried on commercial lines and are therefore hit by the proviso to section 2(15) of the Act?"*

*2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in granting relief to the assessee without considering the judgement of Hon'ble ITA in the case of Navi Mumbai Merchants Gymkhana relied upon by the AO in the assessment order?"*

**3.** At the time of hearing, Ld. AR brought to our notice that similar ground which assessee has raised before the Coordinate Bench in ITA.No. 5059/Mum/2015 & ITA.No. 71/Mum/2017 for the A.Y. 2011-12 and A.Y.2012-13 dated 13.09.2017. He submitted that the Coordinate Bench has considered and adjudicated the issue in favour of the assessee and he brought to our notice Para No. 9 & 10 of the order.

**4.** Ld. DR fairly agreed that the issue is covered in favour of the assessee.

**5.** Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2011-12 & 2012-13

and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

"9. On appraisal of the finding of the Assessing Officer, we noticed that the Assessing Officer observed that the income from club house activities to the tune of Rs.2,05,73,296/- vide which the receipts were from member of guest, fees members of guest, compensation from caterers, locker rent, sundry receipts is the income which is not in nature of charitable purpose. Assessing Officer also was of the view that the expenses incurred on badminton, billiards, card room, lawn tennis swimming pool entertainment etc. are not in nature of charitable. Anyhow, on appraisal of the order passed by the AO we nowhere noticed to which it can be assumed that the assessee trust was involved any in the activities of trade, commerce and business and rendering any service related to trade, commerce and business. The receipt from member, fees from guest of members, compensation from caterers, locker rent, sundry receipts nowhere falls in the category of trade business and commerce. Nothing came into notice that the assessee has changed its object. The object of the assessee trust has duly been described in the memorandum of association and the expenditure seems to its ancillary sports activities as mentioned in the memorandum of association which fail in the nature of general public utility ancillary to a dominant object. Assessing Officer nowhere gave his finding that the trust was providing the service to the outsider also and was involved in the activity of profit and also nowhere pointed out that the service of the restaurant, swimming pool etc. was provided to the outsider other than the member and family members and guest of the members also. Since, the principle of mutuality was not violated then in the said circumstances the case of assessee is liable for exemption u/s 11 of the I.T. Act. Even a single instance is not on the file which may describe this fact that the assessee has been involved in the trade, business and commerce. In this regard we also find support of law settled in :-

1. Calcutta Cricket & Football Club Vs. Ito Exemption In ITA. Nos 466/Kol/2016 dated 05.08.2016 for A.Y. 2011-12

2. Navi Mumbai Gymkhana ITAT Mumbai ITA No. 196/Mum/2013 dated 21.05.2014 for A.Y. 2009-10.

3. Chembur Gymkhana Mumbai ITAT ITA Nos.  
3033/Mum/2015 Dated 08.03.2017 for A.Y. 2010-11.

10. It is also came into notice that the revenue allowed the claim of the assessee in the earlier years and also allowed the claim of the assessee for the A.Y. 2010-11 u/s 143(3) of the I.T. Act, 1961. There is no factual change in the activity of assessee in the current year. Taking into account of all the facts and circumstances of the case, we are of the view that the claim of the assessee has wrongly declined, therefore, the finding of the CIT(A) is wrong and against law and facts and is not liable to be sustainable. Accordingly, we set aside the finding of the CIT(A) on these issues and allowed the claim of the assessee."

6. Since the issue is exactly similar and facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2011-12 and 2012-13, we dismiss the appeals filed by the revenue for the both the assessment years under consideration i.e. A.Y. 2016-17 and A.Y. 2017-18. We order accordingly.

7. In the result, appeals filed by the revenue are dismissed.

Order pronounced in the open court on 24<sup>th</sup> May, 2022.

Sd/-  
**(RAHUL CHAUDHARY)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 24/05/2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**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, Mum**