

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. Nos. 937 to 939/Ahd/2023  
(Assessment Year: 2010-11 to 2012-13)

The Maharaja Pratapsinh Coronation Gymkhana, Jawaharlal Nehru Road, Opp. Rajmahal Khanderao Market Post Office, Vadodara-390001 PAN : AAAAT 4891 K	Vs.	The Income Tax Officer, Exemption Ward, Vadodara
<b>(Appellant)</b>	..	<b>(Respondent)</b>
<b>Appellant by :</b>	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh .B. Parmar, AR	
<b>Respondent by:</b>	Smt. Mamta Singh, Sr DR	
<b>Date of Hearing</b>	21.11.2024	
<b>Date of Pronouncement</b>	22.11.2024	

**ORDER**

**PER BENCH :**

These three appeals have been filed by the Assessee against the separate orders passed by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "CIT(A)" for short) dated 26/27.09.2023 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for Assessment Years (AYs) 2010-11 to 2012-13.

2. The Assessee has taken following grounds of appeal:-

*ITA No. 937/Ahd/2023 (AY 2010-11)*

*"1. The Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in law and in facts in confirming*

*the action of the Ld. A.O in holding that the activities of the appellant are for earning of profit as it's carrying an activity in the nature of trade, commerce or business and that the profit earned by the assessee is not merely incidental.*

*2. The Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in law and in facts in confirming the action of the Id. A.O. in denying the benefit of the claim of exemption u/s 11 by invoking the provisions of section 13(8) r.w.s. 2(15) of the Act and has further erred in holding the appellant to be an AOP whose income is to be assessed as business income.*

*3. The Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in law and in facts in confirming the action of the Id. A.O. in adding to the income of an amount of Rs. 24,82,968/-, being the surplus as per Income and Expenditure Account denying the claim of exemption u/s 11 of the Act.*

*4. The Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in law and in facts in confirming the action of the Id. A.O. in disallowing an amount of Rs. 4,94,017/- representing the terminated members' dues written off as non-recoverable.*

*5. Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the ground(s) of appeal hereinabove contended."*

ITA Nos. 938 & 939/Ahd/2023 (AYs : 2011-12 & 2012-13)

*"1. The Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in law and in facts in confirming the action of the Ld. A.O in holding that the activities of the appellant is not in the nature of charitable purpose in view of the definition of section 2(15) and treating the activities of the club as of commercial nature.*

*2. The Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in law and in facts in confirming the action of the Id. A.O. in invoking the provisions of Sec. 13(8) of the Act for denying the claim of exemption u/s. 11 and 12 of the Act and thereby treating the surplus of income as per Income & Expenditure Account of Rs. 47,08,607/- (AY: 2011-12) & Rs.40,38,090 (AY: 2012-13) as income of the appellant. The*

*disallowance of the claim of the appellant of Rs. 47,08,607/- (AY: 2011-12) & Rs.40,38,090 (AY: 2012-13) by denying the exemption u/s. 11 and 12 of the Act being bad in law and in facts is prayed to be allowed.*

*3. Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the ground(s) of appeal hereinabove contended."*

3. It is a fact on record that the assessee is granted registration u/s 12A/AA of the Act. The Revenue Authorities held that the assessee has been covered by the first proviso to Section 2(15) of the Act based on the fees collected by the assessee against the services provided to the members as well as non-members. This matter has been examined by the Tribunal in earlier year and has been referred to the Revenue Authorities to examine the bifurcation of the fees collected from members and non-members. The entire conspectus of Section 2(15) of the Act has been examined by the Hon'ble Supreme Court in the case of ACIT Vs. Ahmedabad Urban Development Authority, (2022) 449 ITR 1 (SC), wherein a detailed order has been made with regard to computation of amounts which constitute receipts from trade, commerce or business. Hence, the matter is referred to the Jurisdictional Assessing Officer to examine the allowability of the claim u/s 11 of the Act in view of the decision of the Hon'ble Apex Court.

4. Ground No.4 for the AY 2010-11 pertains to disallowance of amount of Rs.4.94 lakhs representing the write off of non-recoverable amount from the terminated members. The Revenue Authorities disallowed the claim on the ground that the assessee was well within their right to recover the dues from the security deposits which has been collected from the members. Before us, it was submitted that the security deposit was non-refundable and taken into corpus of the assessee and the dues have already been

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shown as income in the respective years. Since dues are non-recoverable from the security deposit, we hold that the assessee has a right to write off all the non-recoverable dues.

5. In the result, all the appeals of the assessee are allowed for statistical purposes.

**The order is pronounced in the open Court on 22.11.2024**

Sd/-

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Sd/-

**(DR. B.R.R. KUMAR)  
VICE-PRESIDENT**

Ahmedabad; Dated 22/11/2024

*btk*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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