

**आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA**

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य एवं श्री राकेश मिश्र, लेखा सदस्य के समक्ष  
[Before Shri Pradip Kumar Choubey, Judicial Member & Shri Rakesh Mishra, Accountant Member]

**I.T.A. No. 1335/Kol/2023**

**Assessment Year: 2017-18**

ITO, Ward-22(2), Kolkata	Vs.	The Calcutta Swimming Club  (PAN: AAAAT 3493 K)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	12.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	19.11.2024
For the Appellant/ निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent/ राजस्व की ओर से	Shri Pradip Biswas, Addl. CIT Sr. D.R

**ORDER / आदेश**

**Per Pradip Kumar Choubey, JM:**

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 20.01.2023 for the AY 2017-18.

2. The appeal is time barred by 260 days. The Ld. Sr. Dr. appeared on behalf of the Department filed condonation petition which is as under:

*“Regarding first point that the (EF) appeal is time barred by 260 days as per Ld. CIT(A) order, I would like to inform that the jurisdictional Pr. CIT, i.e. Pr. Commissioner of Income Tax-5, Kolkata has certified that the said appellate order in Appeal No./DIN & Order No. ITBA/NFAC/S/250/2022-23/1048949643(1) dated 20.01.2023, in the case of Calcutta Swimming Club (PAN: AAAAT 2493 K) for the AY 2017-18 of Ld. CIT(A), NFAC, Delhi, was received in their office through e-mail on 09.11.2023 and directed the undersigned to file appeal under section 253 of the Income Tax Act, 1961 against the said order u/s 250 of the Act. Accordingly, the appeal no. ITA 1335/Kol/2023, AY 2017-18 was filed by the undersigned on 04.12.2023, well before limitation date. Therefore, it is requested to kindly accept the Appeal No. ITA 1335/Kol/2023, AY 2017-18. A copy of the certificate issued by the jurisdictional Pr. Commissioner of Income Tax-5, Kolkata is attached herewith for kind reference.”*

3. It is important to mention here that A/R did not raise any objection in condoning the delay. On the facts as narrated above, there is no delay in filing the appeal.

4. The brief facts of the case of assessee are that the assessee being the Calcutta Swimming Club, filed its return of income for AY 2017-18 declaring total income of Rs. 76,46,760/-. The case of the assessee was selected for scrutiny, a statutory notices u/s 143(2) of the Act issued and subsequently notice u/s 142(1) of the Act has also been issued. The assessee in response to the notices, filed a detailed submission and documents before the AO, and the AO after going through the documents and submissions made by the assessee added Rs. 12,10,620/- u/s 14A of the Act and also made an addition of Rs. 3,11,15,451/- u/s 69C read with Section 115BBE of the Act.

5. The said order has been challenged by the assessee before the Ld. CIT(A) wherein the appeal of the assessee has been partly allowed as the addition of Rs. 3,11,15,451/- made by the AO have been deleted but he confirmed the addition of Rs. 12,10,620/- u/s 14A of the Act.

Being aggrieved and dissatisfied with the impugned order, the department/revenue have preferred the instant appeal.

6. The Ld. Sr. Dr. appeared on behalf of the department has challenged the impugned order, thereby submitting that the Ld. CIT(A) has erred in deleting the addition of Rs. 3,11,15,451/- made by the AO ignoring the reality that the facts and circumstances of the case go to show that the assessee has other sources of income apart

from membership fee from hiring of club premises and fee from guests of members as recorded in the bye-laws which is beyond the purview of the principle of mutuality and a violation of it.

7. Contrary to that the Ld. A.R supports the impugned order of Ld. CIT(A).

8. Upon hearing the rival submissions of the Counsel of respective parties, the only points for determination are whether the case of the assessee is covered by the principle of mutuality and addition of Rs. 3,11,15,451/- as made by the AO deleted by the Ld. CIT(A) is justified.

9. In this context, we have perused the case of the assessee and found the following facts:

*“1. M/s Calcutta Swimming Club (hereinafter referred to as assessee/club is not for profit corporate entity which is guaranteed by its member. The assessee is not a company which provides shareholding to its member rather its liabilities/debts are guaranteed by the members.*

*2. As per the Byelaws of association there are various categories of person who may be allowed to use the club. These person may be defined in the category of permanent members, resident members, corporate members, honorary members, courtesy members and associate members, however, it is only the permanent members who are deemed to be members of the club thereby meaning that the permanent members are those who have a right to elect the executive committee of the club, They are those who provide their personal guarantee with regards to the debts and liabilities of the club.*

*3. That the service provided to the club can be exclusively to the said categories of the members of the club and is not open for outside usage.*

*5. That the club and members of the club are not distinct entity.*

*6. The permanent members of the club are mutual to the club.*

10. We have also gone through the judgement cited by the assessee reported in [2023] 7 TMI 466 (Cal-HC) passed in the case of *The Saturday Club Ltd. vs. Principal Commissioner of Income Tax, Kolkata*. The Hon'ble Calcutta High Court has held as under:

*“Taxability of rent receipts-Assessment of club revenue- Whether taxable under the head “income from house property? -scope of principle of mutuality” – Held That:- A club is an association of persons for certain objects and purposes. The concept of mutuality is that whenever money is being spent by a particular member is also being enjoyed by that person in the form of facilities. Members or a group of persons forming the association and the association are seen as a single identity. One cannot make an income out of any sum paid to oneself or spent on oneself. In charging a member for such utility the club should not make any profit. On that principle the income of the club involving contributors and participators is not taxable.”*

11. The present facts of the case reveal that the assessee club was established for non-profit motive and the club and its members were distinct/ distinguishable and they do not have right in any surplus, if generated by the assessee club and none of the activities of the club could be tainted with commerciality. Any reserve held by the club are also used for the purpose of furtherance of the activities of the club and cannot be used by any member for its own benefit. The Ld. CIT(A) in its order has considered the facts of the case of the assessee, considered the bye-laws of the club established the point no. 30 and point no. 9 and discussed the assesment order is as follows:

***“Point No. 30 of Rules and Bye-laws:***

*Hiring of club premises may only arranged through a club member provided approval of General Committee is forthcoming and on the understanding that the member accepts all liabilities for payments of bills resulting from said hiring.”*

*From the above clause of the Rules and Bye-laws of the club that the same is validly doing hiring activity to non-members and charging fees for it and cannot claim it to be a non-business activity.*

***Point No. 9 of Rules and Bye-laws:***

*Member introducing guests (other than person eligible for admission under Rule 28(b) in to the club shall be charged a guest fee which will be fixed by the committee from time to time. The fee is to be paid or signed for at the time of introduction.*

*The above clause clearly establish the fact that the club is not only limited to its member but also providing services to public and charging fees for it and thus comes into the ambit of business. Merely mentioning the word Principle of Mutuality cannot justify the claim of the assessee.”*

12. The learned CIT(A) has further given reason in Para 5.1 to 5.3 to arrive in conclusion that the activities are governed by the principle of mutuality. Going over the

facts of the case, order passed by the Ld. CIT(A) and the judgment in this context, we do not find any merit in the submission of the Ld. D.R. It is clear that activities of the Assessee are covered by principle of mutuality. Accordingly, the appeal of the department is hereby dismissed.

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

Order is pronounced in the open court on 19<sup>th</sup> November, 2024

Sd/-

(Rakesh Mishra / राकेश मिश्र)  
Accountant Member/लेखा सदस्य

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)  
Judicial Member/न्यायिक सदस्य

Dated: 19<sup>th</sup> November, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-22(2), Kolkata
2. Respondent – The Calcutta Swimming Club, 169, A.J. C.. Bose Road, Bamboo Villa, West Bengal, Kolkata-700014
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata