



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1321/PUN/2025

Assessment Year : 2021-22

PYC Hindu Gymkhana, 766, Bhandarkar Road, Shivaji Nagar, Pune 411 004, Maharashtra PAN : AAATP1121F	Vs.	CIT (Exemption), Pune
Appellant		Respondent

Appellant by	:	Shri C.H. Naniwadekar
Respondent by	:	Shri Amit Bobde
Date of hearing	:	20.08.2025
Date of pronouncement	:	06.10.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal at the instance of assessee pertaining to A.Y. 2021-22 is directed against the order dated 30.03.2025 of Ld.CIT (Exemption), Pune passed u/s.263 of the Income-tax Act, 1961 (hereinafter also called 'the Act').

2. Brief facts of the case are that the assessee is a trust and the return of income for A.Y. 2021-22 filed on 12.03.2022 declaring Nil income. Case selected for Scrutiny under CASS for the reason "*Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact and/or law or fact (including transfer pricing issue) is (a) exceeding Rs.25 lakhs in eight metro charges etc*". After issuing various notices u/s.143(2) and 142(1) of the Act assessment proceedings were carried out and assessee made submissions



ITA No.1321/PUN/2025
PYC Hindu Gymkhana

to the details called for by ld. Assessing Officer (AO) through the notice u/s.142(1) of the Act issued on 20.10.2022 and 11.11.2022 as well as show cause notice for proposed variation on 20.12.2022 and after considering the submissions ld. AO assessed the income at Rs. Nil thereby accepting the returned income.

3. Subsequently, ld. PCIT called for the assessment records and after going through the same issued following show cause notice on 17.02.2025 :

"2. On subsequent review of the assessment and the case records, the following facts are observed:

A return of income was filed in your case on 12.03.2022 declaring total income of Rs. Nil. The case was selected for scrutiny under CASS for the reason 'Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact and/or law and fact: Where the addition in an earlier assessment year(s) on a recurring issue of law or fact and/or law and fact'. The assessment was completed u/s 143(3) r.w.s 144B of the Income-tax Act, 1961 on 27.12.2022 determining the taxable income at Rs. Nil and accepting the returned income of the assessee trust.

3. On further perusal of assessment order and submission of the assessee it is observed that the assessee's income of Rs. 5,89,43,944/- pertaining to FY 2020-21 included income of Rs. 81,34,015/- shown as 'Income from other sources'. As mentioned in Schedule 'J' to the Income & Expenditure account, this income consisted of rent from rooms, rent from restaurants and cafeteria, hall rent, cultural event receipts etc. These activities clearly appear to be in the nature of trade, commerce or business. The assessee has not furnished any details, evidence to prove that said income is incidental to the main objects of the trust and that the same has been received from its members only. It is pertinent to note here that the assessee's case was selected for scrutiny under CASS for the reason 'Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact and/or law and fact: Where the addition in an earlier assessment year(s) on a recurring issue of law or fact and/or law and fact' and the assessee, in earlier years, had failed to explain as to how the receipts from similar sources are incidental to the main objects of the assessee, Considering the same, the provisions of sec. 2(15) of the Income-tax Act, 1961 clearly applies to the present case. The assessee, therefore, is not eligible to



ITA No.1321/PUN/2025
PYC Hindu Gymkhana

claim deduction u/s 11 of the Income-tax Act, 1961 in respect of said income.

4. *It is further observed that during the relevant previous year 2020-21, the assessee trust has income of Rs. 1,15,43,999/- by way of interest received from investments and deposits. The assessee has claimed this income exempt under the principle of mutuality. However, as held by the Hon'ble Supreme Court in Secunderabad Club V CIT-V ETC (2023) in Civil Appeal No. 5195-5201 of 2012 dt. 17.08.2023, the principle of mutuality would not apply to the interest income earned on the fixed deposits irrespective of the fact that whether such deposits were made with the members or non-members. In view of the decision of the Hon'ble Apex Court, the interest income of Rs. 1,15,43,999/- was required to be taxed in the assessee's case.*

5. *Considering the above facts, the Assessing Officer was required to reject the assessee's claim of deduction of Rs. 1,96,78,014/- (81,34,015 (+) 1,15,43,999/-) claimed u/s 11 of the Income-tax Act, 1961. He, however, failed to examine the above issues and consider addition of Rs. 1,96,78,014/- to the total income.*

6. *Failure on the part of the Assessing Officer in examining the above discrepancies and rejecting the assessee's claim to the tune of Rs. 1,96,78,014/- (as discussed in preceding Paras 3 to 5) has rendered the assessment order dated 27.12.2022 erroneous in so far as it is prejudicial to the interest of the revenue. This has resulted in under assessment of income to the tune of Rs. 1,96,78,014/- and consequent short levy of tax.*

7. *In view of the above, the order dt. 27.12.2022 passed by the Assessing Officer (FAO) u/s 143(3) for the A.Y 2021-22, thus appears to be erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the Income-tax Act, 1961 and is proposed to be reviewed. Accordingly, your case is fixed for hearing on 28.02.2025 at 11.30 a.m. in my office. It is also requested to furnish your submission, if any, through ITBA module or email (pune.cit.exmp@incometax.gov.in) by this date which shall be taken into account while finalizing the proceedings. Necessary documentary evidences, wherever required, may also be submitted. Please note that in the event of failure to comply with the notice, it shall be presumed that you have nothing to say in this regard and the proceedings shall be completed on the basis of information available on record."*

4. In response to the show cause notice, assessee filed reply on 20.02.2025 and the same placed at pages 4 to 19 of



ITA No.1321/PUN/2025
PYC Hindu Gymkhana

the paper book. In this reply, assessee challenged the issue relating to income from rent etc. at Rs.81,34,015/- ld. PCIT has observed that these activities appears to be in the nature of Trade, Commerce or Business and the assessee has not furnished any details or evidences to prove that said income is incidental to the main objects of the trust. Assessee in its submission has stated that all these details were filed before the ld. AO which have been thoroughly examined during the course of assessment proceedings and further stated that since the alleged receipts of income from rent, collecting event receipts, Gymkhana subscribers etc. at Rs.81,34,015/- is less than 20% of the gross receipts of Rs.5,89,43,944/- assessee's case falls under the provisions of section 2(15) of the Act and the alleged receipts should not be considered as receipts for carrying out the activity in the nature of Trade, Commerce or Business. Reference was made to the decision of this Tribunal in assessee's own case for A.Y. 2010-11 – ITA Nos. 179 and 187/PUN/2015 order dated 23.07.2018.

5. So far as the second issue relating to interest income of Rs.1,15,43,999/-, in the reply filed before ld. PCIT, assessee in all its fairness has accepted that in light of judgment of Hon'ble Apex Court in the case of *Secunderabad Club V CIT-V ETC (2023) in Civil Appeal No. 5195-5201 of 2012 dt. 17.08.2023* the interest income of Rs.1,15,43,999/- being not income from Members is liable to be taxed. Along with it was stated that receipt of rent from BSNL amounting to Rs.4,99,814/- is also liable to be taxed and Principle of Mutuality is not applicable. However, it was further stated that since the assessee also holds valid registration u/s.12AB



the amount may be allowed as deduction/exemption u/s.11 of the Act. Accordingly, it was stated that appropriate direction may be given to the ld. AO in this regard.

6. After considering the submissions filed by the assessee, ld. PCIT concluded the revisionary proceedings observing that the revisionary proceedings have been carried out with proper jurisdiction and further directed the ld. AO to re-frame the assessment by considering the following direction:

“17. Considering the facts of the present case, the ratio of the above decisions squarely applies to the present assessee's case and it is clear that the assessment order dated 27.12.2022 passed u/s 143(3) rws 144B of the Income-tax Act, 1961 is erroneous in so far as it is prejudicial to the interest of revenue Without prejudice to the fact that the assessment order passed by the AO is erroneous insofar it is prejudicial to the interest of revenue and the findings as to why the same is held to be so has already been noted in this order, the case requires to be set aside for factual correctness to discern all the instances where the interest of revenue has been prejudicially harmed due to aforesaid reasons and also for providing assessee opportunities of being heard as a principal of natural justice

18. Therefore, in view of the above facts, the assessment order dated 27.12.2022 passed u/s 143(3) r.w.s. 144B of the Income-tax Act, 1961 is hereby set aside on the above to the file of the assessing officer. The issues of enquiries have been clearly set out in this order. The AO is directed that the assessment should be reframed as per the provisions of law, after considering proper facts, submissions of the assessee and also after necessary verification in the light observations made above, after affording proper opportunity to the assessee.

19. For the reason that the proceedings are being set aside and therefore the same will be completed as remand proceedings I find it advisable for the AO to consider the following judicial propositions while finalizing the assessment order pursuant to this 263 order.

a) The AO shall adhere to the proposition laid by the Hon'ble Supreme Court in the case of Commissioner of Customs (Imports), Mumbai v. Dilip Kumar & Company & Ors. in Civil Appeal No. 3327 of 2007 whereby it is held that in case of any ambiguity in the



ITA No.1321/PUN/2025
PYC Hindu Gymkhana

interpretation of law the interpretation favouring revenue should be followed in matters related to exemptions

b) The AO should follow the precedents set by following case laws whereby it has been held that the proceedings initiated for the interest of revenue cannot be allowed for the benefits of the assessee.

i. CIT v. Sun Engineering Works (P) Ltd [1992] 198 ITR 297 (SC)

ii. CIT v. Caixa Economica De Goa [1994] 210 ITR 719 (Bombay)

c) However, if any benefit is claimed by the assessee which could be requested through any alternate remedy, he/she/it should be advised to adopt/explore alternate mechanism under section 119 or any other provisions available as propounded in the case of Hon'ble Apex court in M/s. Vishwanath Traders v Union of India & Ors, (Special Leave to Appeal (C) No(s) 15594 of 2023 dated August 04. 2023)

d) The ratio laid in the case of Goetze (India) Ltd. vs Cit on 24 March, 2006 in [2000]284 ITR 323(SC) is squarely applicable as the remand proceedings are extension of a revisional proceedings and not appellate proceedings, therefore any fresh claim other than what has been made in the ITR may not be made available to the assessee.”

7. Aggrieved assessee is now in appeal before this Tribunal raising the following grounds of appeal :

“The Appellant-assessee craves leave to prefer an appeal against the order of the Id.CIT(Exemption) Pune dated 30 March 2025 passed under section 263 of the Income Tax Act, 1961 ("Act") on the following grounds, each of which are without prejudice to the others:

1. The Id. CIT erred in exercising powers u/s 263 of the Act to set aside the Assessment Order dated 27 December 2022. The said Assessment Order was neither erroneous nor prejudicial to the interests of the Revenue.

2. The Id. CIT failed to appreciate that the issues on which revisionary jurisdiction was sought to be exercised were already duly scrutinized and enquired into by the Id. AO during the scrutiny assessment. The present case was neither a case of 'no enquiry' nor even a case of 'insufficient enquiry, and the Id. AO had taken a possible view in the matter. The order u/s 263 is wholly beyond the scope of revisionary powers.



3. *The id. CIT failed to appreciate that revision on the issue of income from rent etc. of Rs 81.34,015 was not sustainable in law. The said issue was specifically considered by the AO in scrutiny proceedings; and further, the issue is decided in the assessee's favour by the Hon'ble ITAT in the assessee's own case for AY 2010-11*

4. *The Id. CIT failed to appreciate that as regards income of Rs. 1,15,43,999 from interest, the assessee would be entitled to benefit of section 11. In any event, expenses would have to be allowed against the gross receipts. The Id. CIT failed to bring out how the order is erroneous or prejudicial to the interests of the revenue.*

5. *Without prejudice, the Id. CIT erred in law in indicating to the AO on how the assessment was to be completed. Once the Id. CIT was of the view that the assessment was required to be set aside, the manner of completion of assessment could not be dictated further*

6. *Without prejudice, the Id. CIT further erred in law m essentially directing that the AO should not allow any benefits to the assessee in set aside proceedings. The judgments relied on by the Id. CIT are not on the issues involved in the present case. Further, such a direction could not at all have been given when the assessment was being set aside, and the question of whether any fresh claim or alternative claim could be made by the assessee was not at all before the ld. CIT”.*

8. Ld. Counsel for the assessee vehemently argued referring to the written submission filed before ld. PCIT placed in the paper book at pages 4 to 19 and also made reference to various documents filed in paper book running into 188 pages including the decision of this Tribunal in assessee's own case as well as other decisions. For the sake of convenience, the index of the paper book is extracted below :

INDEX

Sr.No.	Particulars	Page Nos.
1	Copy of notice u/s 263 of the Act dated 17.02.2025	1-3
2	Copy of submissions in response to the notice u/s 263 dated 28.02.2025	4-19
3	Copy of notice u/s 142(1) of the Act dated 20.10.2022	20-23
4	Copy of notice u/s 142(1) of the Act dated 11.11.2022	24-26



5	<i>Copy of show cause notice for proposed variations dated 20.12.2022</i>	27-30
6	<i>Copy of response filed against the show cause notice for proposed variation dated 23.12.2022</i>	31-45
7	<i>Decision of Hon'ble ITAT Pune in assessee's own case for AY 2010-11 [ITA No.179/PUN/2015 & 187/PUN/2015]</i>	46-66
8	<i>Decision of Hon'ble ITAT Pune in assessee's own case for AY 2010-11 [MA No.94 & 95/PUN/2018]</i>	67-70
9	<i>Decision of Hon'ble ITAT Pune in assessee's own case for AY 2010-11 [ITA No.179/PUN/2018]</i>	71-75
10	<i>Decision of Hon'ble ITAT Pune in assessee's own case for AY 2011-12 [ITA No.1421/PUN/2017 & 1888/PUN/2017]</i>	76-81
11	<i>Decision of Hon'ble ITAT Pune in assessee's own case for AY 2009-10 and AY 2012-13 [ITA No.2577 & 2578/PUN/2016 and 2822/PUN/2016 respectively]</i>	82-86
12	<i>Decision of Hon'ble ITAT Pune in assessee's own case for AY 2013-14 [ITA No.2084/PUN/2017 & 2272/PUN/2017]</i>	87-92
13	<i>Decision of Hon'ble Supreme Court of India in case of CIT vs. Bankipur Club Ltd. [(1997) 226 ITR 97]</i>	93-104
14	<i>Decision of Hon'ble Bombay High Court of India in case of CIT vs. Willingdon Sports Club [(2008) 302 ITR 279]</i>	105-111
15	<i>Decision of Hon'ble Bombay High Court of India in case of CIT-3 vs. Air Cargo Agents Association of India [(2016) 286 CTR 340 (Bom)]</i>	112-113
16	<i>Decision of Hon'ble ITAT Pune in case of ACIT vs. Poona Club Ltd. [ITA No.1481/PUN/2016 & 1512/PUN/2016]</i>	114-120
17	<i>Decision of Hon'ble Delhi High Court of India in case of PCIT-2 vs. Clix Finance India Pvt. Ltd. [ITA No. 1428/2018 dt. 01.03.2024]</i>	121-134
18	<i>Copy of Amended Scheme of PYC Hindu Gymkhana dated 16.05.2018</i>	135-180
19	<i>Copy of Audited Financial Statements for FY 2020-21</i>	181-188

9. On the other hand, ld. DR supported the order of ld. PCIT.

10. We have heard the rival contentions and perused the record placed before us. Through this appeal assessee has firstly challenged the assumption of jurisdiction by ld. PCIT u/s.163 of the Act and secondly he submitted that even on



ITA No.1321/PUN/2025
PYC Hindu Gymkhana

merits assessee deserves to succeed relating to the issues arising out of the income from rent etc. at Rs.81,34,015/- as well as income from interest at Rs.1,15,43,999/-

11. We find that the provision of Section 263 of the Act has a direct bearing on the issue raised before us, therefore, it is pertinent to take note of this section which reads as under:

"263(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation- For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-

(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include-

(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;

(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;

(b) record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.



(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation- In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded."

12. On a bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4th compartment of this section. The



learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold contentions of the ld. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the CIT taken u/s 263.

13. Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC)* has laid down following ratio with regard to provisions of section 263 of the Act:

*“There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue - *Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC)* and in *Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC)*. [Emphasis Supplied]”*

14. Now examining the facts in light of the settled judicial precedents and the provisions of section 263 of the Act as well as going through the decisions referred and relied on by ld. Counsel for the assessee in the paper book filed before us, we firstly deal with the issue of assumption of jurisdiction by ld.



ITA No.1321/PUN/2025
 PYC Hindu Gymkhana

PCIT u/s.263 of the Act. From going through the submissions filed by the assessee before ld. PCIT in response to the show cause notice issued u/s.263 of the Act relating to the issue of income from interest at Rs.1,15,43,999/- assessee has itself accepted that this issue of interest income has not been examined by the ld. AO and further stated that even the income from rent from BSNL at Rs.4,99,814/- also needs to be brought to tax. This submission in itself is sufficient to indicate that ld. PCIT has validly assumed jurisdiction u/s.263 of the Act after carefully examining the assessment records. Therefore, legal issues raised in Ground No. 1 and Ground No.2 by the assessee challenging the invocation of jurisdiction u/s.263 of the Act are hereby dismissed.

15. Now we take up the merits of the case. First issue relates to income from rent etc. at Rs.81,34,015/- which ld. PCIT has observed that the same is a receipt in the nature of Trade, Commerce or Business activity and therefore Principle of Mutuality is not applicable. For dealing with this issue we will first go through the provisions of section 2(15) of the Act which reads as under :

“(15) “charitable purpose” includes relief of the poor, education, [yoga,] medical relief, “[preservation of environment (including water. sheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest], and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless-



ITA No.1321/PUN/2025
PYC Hindu Gymkhana

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;]]”

16. Before us, Id. Counsel for the assessee referring to the clause (ii) to provisions of section 2(15) has stated that the alleged receipts are not exceeding 20% of the total receipts. Alleged receipts at Rs.81,34,015/- are from the following sources :

<i>Nature of income</i>	<i>Amount (Rs.)</i>
<i>Form fees</i>	<i>39,600</i>
<i>Gymkhana subscribers</i>	<i>13,89,889</i>
<i>Library fees</i>	<i>3,750</i>
<i>Rent from BSNL</i>	<i>4,99,814</i>
<i>Cultural events receipts</i>	<i>2,20,000</i>
<i>Other income</i>	<i>4,29,064</i>
<i>Hall rent</i>	<i>11,56,996</i>
<i>Rent from rooms</i>	<i>13,80,450</i>
<i>Rent from restaurant & cafeteria</i>	<i>30,14,452</i>
<i>Total</i>	<i>81,34,015</i>

17. Break up of the total gross receipts of the assessee for the year under consideration are as under:

<i>Nature of Receipts</i>	<i>Amount (Rs.)</i>
<i>Sports activities</i>	<i>2,00,85,967</i>
<i>Membership fees</i>	<i>1,91,79,963</i>
<i>Income from investments & deposits</i>	<i>1,15,43,999</i>
<i>Income from other sources</i>	<i>81,34,015</i>
<i>Total</i>	<i>5,89,43,944</i>

18. From going through the above details, it is apparent that the alleged receipts at Rs.81,34,015/- are only 13.80% which is far below the 20% threshold limit provided under clause (ii) to section 2(15) of the Act. It is also demonstrated



ITA No.1321/PUN/2025
 PYC Hindu Gymkhana

before us that in the reply to the notice u/s.142(1) of the Act assessee has furnished all these details including the Audited Financial Statements and the break up of the receipts. Therefore, under these given facts and circumstances, since the alleged receipts of Rs.81,34,015/- are less than 20% of the gross receipts, the assessment order cannot be held to be erroneous and prejudicial to the interest of Revenue on this issue under consideration. Finding of ld. PCIT on this issue is hereby set aside and the relevant Ground of appeal No.3 raised by the assessee is allowed.

19. Second issue is regarding the interest income of Rs.1,15,43,999/- which as per the ld. PCIT is the income from non Members earned on investments/deposits and therefore in light of judgment of *Hon'ble Apex Court in the case of Secunderabad Club (supra)*. Principle of Mutuality cannot be applied on the interest income.

20. Here we would like to take note of the submissions made by the assessee before ld.PCIT and the same reads as under :

“ISSUE 2: Income of Rs.1,15,43,999 from interest etc.:

This issue relates to bringing to tax income from investments amounting to Rs. 1,15,43,999 as the principle of mutuality would not be applicable in view of the decision of Hon'ble Supreme Court in Secunderabad Club's case.

In all fairness and also in the light of Hon'ble Supreme Court's decision, which is binding on all of us, we submit that we have no objection to bringing to tax Rs. 1,15,43,999 to tax and we are prepared to pay the requisite taxes. Further, as an honest assessee, we may bring to your kind notice that the principle of mutuality is also not applicable to receipt of rent from BSNLRs. 4,99,814. This also needs to be brought to tax. The total amount to be brought to tax thus works out to Rs. 1,20,43,813.



ITA No.1321/PUN/2025
PYC Hindu Gymkhana

Our only submission in this regard is that while bringing to tax these amounts, we may kindly be allowed a reasonable amount as deduction towards expenses incurred in earning these incomes. The Hon'ble ITAT in Poona Club's (ITA no. 1481/Pn/2016-copy attached as Annexure-10) has considered 7.5% of the receipts as reasonable expenses. In the light of this position, we request you to allow 7.5% of Rs. 1,20,43,813 as deduction.

Furthermore, as the above amounts are not eligible to be within the ambit of mutuality, we accept they would fall to be considered as income. However, as we have a valid and subsisting registration u/s 12AB of the Act, we submit that the amounts may be considered for deduction/exemption u/s 11 of the Act. Accordingly we request the appropriate directions may be issued to the learned Assessing Officer in this regard to consider the appropriate tax treatment of the aforesaid amounts of Rs. 1,20,43,813.”

21. From the above submissions filed by the assessee, we on perusal of the assessment order and the replies filed before the ld. AO, find that this issue of taxability of interest income at Rs.1,15,43,999/- has not been examined by the ld. AO and even the assessee has also fairly accepted this aspect. Even it has been accepted by the assessee that the rental income from BSNL at Rs.4,99,814/- being income from non Member is also liable to be taxed. However, assessee has also taken an alternate plea that along with carrying out the activities the assessee is also registered as a Charitable organization u/s.12AB and the benefit of provisions u/s.11 deserves to be allowed to the assessee. Since the issue has not been examined by the ld. AO, we find that ld. PCIT has rightly observed and has directed the AO to re-frame the assessment order after examining the issue about taxability of interest income at Rs.1,15,43,999/- earned from deposits /investments. Assessee shall furnish all the relevant details before ld. AO in support of its contentions. After considering the same, ld. AO shall decide the issue referred by ld. PCIT in



ITA No.1321/PUN/2025
PYC Hindu Gymkhana

the impugned order in accordance with law. To this extent, the order of Id. AO is held to erroneous and prejudicial to the interest of Revenue and relevant finding of Id.PCIT is affirmed. The ground of appeal No.4 raised by the assessee is dismissed.

22. Ground Nos. 5 and 6 being alternate and consequential needs no adjudication as they have become infructuous since we have dismissed Ground No.4 raised by the assessee.

23. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 06th day of October, 2025.

Sd/-

Sd/-

(VINAY BHAMORE)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 06th October, 2025.

Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.