

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos. 2887 to 2892/Mds/2016  
निर्धारण वर्ष / Assessment Years : 2007 – 08 to 2012 - 13

M/s. The Mylapore Club,  
39. Luz Church Road,  
Mylapore, Chennai - 600004

PAN : AABAT0599B

v. The Deputy Commissioner of  
Income Tax,  
Business Circle – II, Chennai - 34  
New Jurisdiction  
The Deputy Commissioner of  
Income Tax,  
Non-Corporate Circle-2,  
Chennai - 34

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V. S. Jayakumar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri V. Nandakumar, JCIT

सुनवाई की तारीख/Date of Hearing : 27.12.2016

घोषणा की तारीख/Date of Pronouncement : 31.01.2017

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

All the appeals of the assessee are directed against the common order passed by the Commissioner of Income Tax (Appeals)-2, Chennai, dated 29.07.2016 and pertains to the assessment years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13. Since

common issue arises for consideration in all the appeals, we heard the same together and disposing off the same by this common order.

2. The first issue arises for consideration is reopening of the assessment under Section 147 of the Income Tax Act, 1961 (in short 'the Act').

3. Shri V.S. Jayakumar, the Ld. counsel for the assessee submitted that the reopening of the assessment is due to mere change of opinion. Even though, the assessment for all the years under consideration were made under Section 143(1) of the Act, according to the Ld. counsel for the assessee in the absence of any fresh material, the Assessing Officer cannot say that income chargeable to tax as escaped assessment. Therefore reopening of assessment was not justified.

4. On the contrary, Shri V. Nandakumar, the Ld. Departmental Representative submitted that no assessment was made under Section 143 (3) of the Act. The return filed by the assessee was processed under Section 143 (1) of the Act. Since, the Assessing Officer found that income chargeable to tax was escaped from assessment, and due to expiry of time limit for notice under Section

143 (2) of the Act, the assessment was reopened by issuing notice under Section 148 of the Act. Therefore, it is not a case of change of opinion.

3. We have considered the rival submissions on either side and perused the material available on record. Admittedly, the return filed by the assessee was processed under Section 143 (1) of the Act. For making *prima facie* adjustment no assessment order was passed under Section 143 (3) of the Act. Therefore it cannot be said that the Assessing Officer applied his mind to any of the issue raised by the assessee and expressed his opinion. For the purpose of change of opinion, the Assessing Officer was expected to express an opinion earlier. In the case before us, it is not the case of the assessee that the Assessing Officer examined any of the issue or the claim made by the assessee and expressed his opinion. Since, the conditions provided for reopening of the assessment under Section 147 of the Act was satisfied, this Tribunal is of the considered opinion that the Assessing Officer has rightly issued notice under Section 148 of the Act for reopening of the assessment under Section 147 of the Act. Therefore it is not a case of change of opinion as claimed by the assessee. Accordingly, the reopening of the assessment by issuing notice under Section 148 is upheld.

4. The next issue arises for consideration is interest income earned by the assessee from fixed deposit.

5. We heard Shri. V.S. Jayakumar, the Ld. counsel for the assessee and Shri V. Nandakumar, the Ld. Departmental Representative.

6. Admittedly, the assessee deposited fixed deposit in the bank and the interest earned by the assessee was claimed as exemption on the principles of mutuality. This issue was examined by this Tribunal elaborately in *Ootacamund Club v Income Tax Officer*, (2015) 42 ITR (Trib) 0435 (Chennai), found that when the assessee received interest either from the bank or any other financial institution which are not the members of the assessee club cannot be allowed as exempt, since, the principle of mutuality cannot be applied to such transaction. In view of this decision of the co-ordinate bench of this Tribunal in *Ootacamund v ITO (supra)*, this Tribunal did not find any reason to interfere the order of the lower authority. Accordingly the same is confirmed.

7. The next ground of appeal is with regard to expenditure for earning interest income.

8. Shri V.S. Jayakumar, the Ld. counsel for the assessee submitted that the assessee deposited money in the fixed deposit and earned interest. For the purpose of depositing the money and to follow up the matter, the assessee has to naturally depute an employee. Therefore the assessee has to incur certain expenditure on payment of salary to such employee which has to be allowed for earning the interest income.

9. On the contrary, Shri V. Nandakumar, the Ld. Departmental Representative submitted that for earning interest income from fixed deposit of the bank, the assessee need not incur any expenditure at all. The employee deputed by the assessee, is employee of the assessee for the purpose of carrying out his regular activity. Making fixed deposit and earning of interest is not the business of the assessee. Therefore at the best, the salary paid to the employee may be claimed as expenditure while computing the operational income of the assessee. Making fixed deposit and earning interest cannot be construed as an operation activity of the assessee. Therefore the CIT (Appeals) had rightly disallowed the claim of the assessee.

10. We have considered the rival submissions on either side and perused the material available on record. The assessee is a club and claiming exemption on the principles of mutuality. The operational income from the mutual activity has to be computed after allowing of operational cost. The salary paid to the employee of the assessee is one of the operational costs which need to be deducted while computing the total income of the assessee. As rightly submitted by the Ld. D.R., making fixed deposit is not the business of the assessee. It is also not the activity of the assessee. Interest income is assessable under the head income from other sources. Since, the bank or financial institution from which the interest income is received is not a member of the assessee club, such an income cannot be claimed to be exempted on the principles of mutuality. However, the expenditure namely the so called salary paid to the employee who was deputed by the assessee for making the fixed deposit was the employee of the assessee. Therefore, as rightly submitted by the Ld. D.R., the salary can be taken as operational cost for the purpose of running the club. However at any stretch of imagination, it cannot be construed as expenditure for earning the interest on the fixed deposit. Therefore, this Tribunal do not find any reason to interfere with the orders of the lower authorities. Accordingly the same is confirmed.

11. In the result, the appeals of the assessee stands dismissed.

Order pronounced on 31<sup>st</sup> January, 2017 at Chennai.

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 31<sup>st</sup> January, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-2, Chennai
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.