

free to accept gifts and donations from anyone as per clause 10 of its Memorandum of Association, inferred that the identity of the contributors/donor to the fund of the appellant is not certain at any point of the time as the contributor/donor may be any person other than its members also; therefore the principle of mutuality does not applicable here. Further, the AO also noticed that the appellant is not bound by any clause of its Memorandum of Association for refunding the funds to its members even after its dissolution. Therefore, the AO, placing reliance on the decision of the Hon'ble Punjab and Haryana High Court in the case of Haryana State Co-operative Labour and Construction Federation Limited Vs. CIT 252 ITR 265, concluded that the members have no control over the fund of the appellant society; therefore the principle of mutuality does not applicable here. Consequentially, the AO placing reliance on the decision of the Hon'ble Supreme Court in the case of Chelmsford Club 243 ITR 89 held that the appellant failed to be a society wherein the principal of mutuality exists as the identity of the contributors to the fund of the appellant is not certain and the appellant is not under any obligation to refund the funds to the contributors on the dissolution of the society. Accordingly, the AO taxed the appellant's income.”

3. Before the First Appellate Authority, the assessee claimed that its income is exempt on the principles of mutuality. Further levy of interest u/s 234A and u/s 234B of the Act was challenged. The First Appellate Authority held that the income of the assessee is not covered by the principles of mutuality. Aggrieved the assessee is before us.

4. We have heard Prof. S.Sampath, C.A. the Ld.Counsel for the assessee and Smt.Rakhi Vimal, JCIT, Ld.D.R. on behalf of the Revenue.

5. The A.O. rejected the claim of the assessee that its income is exempt by the principles of mutuality by relying on: (a) Para 10 of the Memorandum of Association (MOA); (b) Para 12 of the MOA of the Society.

6. Prof.Sampath, the Ld.Counsel's defense is that no funds and donations were received by the assessee during the year and hence mere authorization given to the Society vide para 10 of the MOA, to receive funds and donations from other than Members, does not impinge on the concept of mutuality.

6.1. On Clause no.12 of the MOA, he relied on the submissions made before the First Appellate Authority which is at page 31 of the paper book. He argues that the Hon'ble Punjab & Haryana High Court in the case of Haryana State Cooperative Labour and Construction Federation Ltd. vs. CIT reported in 252 ITR 265, was dealing with the case where the Members had no control over the funds of the Society and whereas, the facts in the present case are entirely different. He emphasized that in the case of Chelmsford Club reported in 243 ITR 89 (SC), the condition laid down therein i.e. "the funds can be acceptable for mutual benefit or returned to the contributors". He submitted that dissolution is not envisaged in the near future as this is a body constituted by different countries and hence, to invoke the Clause would be hypothetical.

6.2. He referred to the order of the DIT(E), Delhi dt. 27.10.2007 u/s 12AA of the Act wherein, at the end of page 2 in para 2, the Ld.CIT(A) held that the assessee is by the Members, for the Members and at best, it can be called a study forum of regulators. The assessee agrees with the argument of the revenue that, the concept of mutuality does not apply to income from interest. He submits that the judgement of Hon'ble Supreme Court in the case of Bangalore Club is against the assessee. On levy of interest u/s 234A, he points out that the directions of the First Appellate Authority are not implemented by the A.O. The Ld.Sr.D.R. relies on Clause no.10 and 12 of the MOA and argues that the pith and substance of this clauses demonstrates that the assessee is not governed by principles of mutuality.

6.3. After hearing rival contentions, I find that the aims and objects of the Society are described in Clause 3 of the MOA. Para 3, page 2 and 3 of the paper book reads as follows:-

“3. Aims and Objectives:

SAFIR aims at providing high quality capacity building and training on infrastructure regulation and related topics, in South Asia. The specific objectives of SAFIR are to:

- (i) Provide a platform for experience sharing amongst the regulators of the region;
- (ii) Facilitating effective and efficient regulation of utility and infrastructure industries;
- (iii) Initiate beneficial exchange of knowledge and expertise;
- (iv) Evolve best practices;
- (v) Build regulatory decision making and response capacity in South Asia;
- (vi) Conduct training programs to serve regulatory agencies and other stake holders;
- (vii) Spur research on regulatory issues;
- (viii) Interact, coordinate, facilitate and engage with various international developments, regulations, financial bodies and government or private entities of various countries.

Further, it may include any objectives subsidiary and ancillary to the main aim set out above and are to be used only for the attainment of that aim and any income generated there from is to be applied for the aim only.”

Clause 10 of the rules and regulations in Annexure I read as follows:-

Funds and donation etc:

10.1. SAFIR may receive gift, grants, donations and benefactions from any individual, corporate body, association, trust, world bank, or any other statutory or regulatory or financial body, Government or any other source in

or outside India and the same shall be used by the association for exercising its objects and discharging its aim subject to the condition that any acceptance from foreign agencies, institutions and government will be on such terms as may be prescribed by statutes or law for the time being in force. This includes:

10.1.1. A corpus fund of amount will be created with contribution from various members, individual, corporate body, association, trust, world bank, or any other statutory or regulatory or financial body, government or any other source in or outside India.

10.1.2. All other sums of money that may be provided by the governments.

10.1.3. All subscription and charges received from the members.

10.1.4. All sums of money generated by way of grants and donations or any other manner or from any other sources.

10.1.5. All other sums of money credited to the said fund subject to the tax and foreign currency transactions related statutes and regulations, for the time being in force.

Similarly in the rules and regulations, Clause 11 read as follows:-

“11. Utilisation of the funds

11.1. All the funds of the SAFIR shall be deposited, utilized or invested by the Secretariat under the general supervision of the Executive Committee as allowed under various applicable tax statutes and rules in force for the time being.

11.2. All the income and movable and immovable assets of the Association shall be utilized and applied solely for the promotion and achievements of its aims and objectives as set forth in the MOA.

11.3. No portion of the income or assets of the Association shall be paid or transferred directly or indirectly by way of dividend, bonus and profit or in any other manner to the present or past members of the Association or to any person claiming through any one or more of them.

11.4 No member of the Association may make any profit or derive any pecuniary benefit by virtue of his membership of SAFIR. However, a

member may be reimbursed any out of pocket expenses incurred by him in connection with the work of the Association.

11.5 Notwithstanding anything contained hereinabove, any member of SAFIR may be allowed by the Steering Committee, on a recommendation made by the Secretariat, a remuneration for services rendered by him to the Association as may be considered reasonable in the circumstances of the case.

Clause 18 of rules and regulations read as follows:-

18. Use of corpus in case of dissolution

At any time, if it is found that the affairs of SAFIR cannot be carried on, either because it has survived its usefulness, or because sufficient support is not forthcoming or for any other reason, the Steering Committee may wind up SAFIR. Provided that SAFIR shall not be wound up save by a clear majority of two thirds of the members of its Steering Committee present and voting at t EGM.

Should it be decided to wind up as aforesaid, its property shall not be paid to or distributed among its members, but shall be given to some other body having objects similar to SAFIR or to any charitable society to be determined by the votes of not less than three fifths of the members of the Steering Committee present at a meeting called for that purpose.

6.4. A perusal of these Clauses demonstrate that the principles of mutuality are not attracted in this case, for the reason that, there is no identity between the contributor and the participant of the funds. The main object, does not lay down, that the participants are confined to the persons who are Members of the Society. The argument of the Ld.Counsel for the assessee, that Clauses 10 (rules and regulations) and Clause 12 of the MOA cannot be applied, for the reason that no such activity has taken place during the year, or that the happening of dissolution is hypothetical is not correct. When the constitution of the Society authorizes receipt of money by

way of funds, donations, contributions, grants, in addition to subscription and charges received by the Members, then non receipt of the amounts during the year, cannot be a ground to come to a conclusion that the concept of mutuality applies to the assessee. Similar is my view on Clause 12 of the MOA read with Clause 18 of the Rules and Regulations in Annexure-I, lead me to a conclusion that concept of mutuality claimed by the assessee was rightly rejected by the Revenue.

6.5. The recordings made by the DIT(E), while rejecting the application u/s 12AA, in my view are in different contexts. Thus, this argument of the Ld.Counsel is rejected.

The Hon'ble Supreme Court in the case of Chelmsford Club (2000) reported in 243 ITR 89 held that "where there is identity in the character of those who contribute and of those who participate in the surplus, the fact of incorporation may be immaterial and the incorporated company may well be regarded as a mere instrument, a convenient agent for carrying out what the members might more laboriously do for themselves". Their Lordships have laid down the three tests before the principle of mutuality can be applied. In a nutshell, these tests are: (i) the identity of the contributors to the fund and the recipients from the fund; (ii) the organization exists only for mutual benefit; (iii) the funds can be expended for mutual benefit or returned to the contributors.

It is only when these tests are fulfilled that the principle of mutuality can be applied. In the present case, the assessee is under no obligation to return the funds to the contributors.

6.6. In the result this ground of the assessee is dismissed.

6.7. Consequently the assessment of interest which admittedly is received on surplus placed in Fixed Deposits in banks, is also taxable. Thus this ground of assessee is dismissed

ITA No. 5076/Del/2014
A.Y. 2010-11
South Asia Forum for Infrastructure Regulation (SAFIR)

6.8. On the issue of levy of interest u/s 234A, we direct the A.O. to carry out the directions given by the First Appellate Authority.

7. In the result the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 07th October, 2015.

Sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 07th October, 2015

**manga*

Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar, ITAT