आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos.1068 & 1069/PUN/2014
निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

Poona Club Ltd.,
6, Bund Garden Road,
Pune – 411001 …. अपीलार्थी/Appellant

PAN: AABCP1272B

Vs.

The Asst. Commissioner of Income Tax,
Circle – 4, Pune …. प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Dr. Sunil Pathak /
Shri Nilesh Khandelwal /
Nitin Desai

प्रत्यर्थी की ओर से / Respondent by : Shri Vivek Aggarwal

सुनवाई की तारीख / **Date of Hearing : 25.10.2017**		घोषणा की तारीख / **Date of Pronouncement: 23.01.2018**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Both the appeals filed by the assessee are against separate orders of CIT(A)-II, Pune, both dated 29.11.2013 relating to assessment years 2008-09 and 2009-10 against respective orders passed under section 143(3) of the Income Tax Act 1961 (in short the 'Act').

2. Both the appeals relating to the same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. Both the appeals were filed after the delay of 56 days. The assessee in this regard has filed an Affidavit for condonation of delay in filing the appeal late before the Tribunal. The appeal was decided by the CIT(A) on 29.11.2013 and was received by the assessee on 25.01.2014. The last date for filing the appeal was 26.03.2014 and the appeal was filed before the Tribunal on 21.05.2014. The delay in filing the appeal late before the Tribunal is on the ground that the accounts staff of assessee's organization, who was handling the filing of appeal, the Manager (Accounts) Shri J.S. Nikam submitted his resignation on 07.01.2014 and he was relieved of his responsibilities on 06.02.2014. It is further pointed out that Shri Nikam after filing his resignation letter was only discharging pending matters and was not involved in looking after fresh matters. It is further stated in the affidavit that the appellate order was not forwarded by Shri Nikam to the Finance Director, hence there was failure in taking action upon the said order. Only on questioning by the staff of assessee at CIT(A) office, the assessee became aware that the order has already been passed by the CIT(A). The said information was received by the assessee club on 04.04.2014 and the appeal was then prepared and filed on 21.05.2014. Hence, the petition for condonation of delay. We find merit in the plea of assessee in this regard and accordingly, condone the delay of 56 days in filing the appeal late before the Tribunal and we proceed to decide the issues raised on merits by the assessee.

4. The first issue raised in the present appeal is the taxability of interest received from bank and MSEB. The case of the assessee is that the said interest forms part of mutual receipts of assessee club and following the principles of mutuality, it is not to be taxed in the hands of assessee. On without prejudice basis, the second issue raised is of allowing proper and adequate deduction under section 57(iii) of the Act from such interest income.

5. The facts and issues in both the appeals are similar. However, in order to adjudicate the issues, reference is being made to the facts in ITA No.1068/PUN/2014, relating to assessment year 2008-09.

6. The assessee in ITA No.1068/PUN/2014, relating to assessment year 2008-09 has raised the following grounds of appeal:-

1. *The delay in filing of the appeal may please be condoned.*

2. *On facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that the interest received from Bank & MSEB to the tune of Rs.75,63,440/- be treated as income forming part of the integral part of the mutual receipts and is governed by the principals of mutual receipts and therefore does not form of taxable income. Just and proper relief to be granted to the appellant.*

3. *Assuming and without admitting that the income from interest is not covered by principal of mutuality and without prejudice to ground no 2 and on facts and circumstances prevailing in the case and as per the provisions of the act it be held that proper and adequate deduction under section 57(iii) of the Income Tax Act be allowed from such interest income.*

7. Briefly, in the facts of the case, the assessee for the year under consideration had furnished return of income taxable income of Rs.76,62,500/-. The case of assessee was selected for scrutiny. The Assessing Officer noted that the assessee was a Members Club and was incorporated under the Companies Act. The Club was established for promotion of sports and activities connected with the sports. The existence of said Club was since 124 years and

had about 5000 members. The Assessing Officer on scrutiny of the details produced by the assessee accepted the returned income of the assessee at Rs.76,62,500/-.

8. The assessee filed an appeal before the CIT(A) raising the following grounds of appeal which are mentioned in the order of CIT(A) dated 29.11.2013.

> *1) The Assessing Officer erred in treating interest received from bank and MSEB of Rs.75,63,440/- as income which is a receipt forming integral part of the mutual receipts and is governed by the principle of mutual receipts.*
>
> *2) The appellant craves leave to add, amend, alter delete any of the grounds of appeal.*

9. The assessee further raised an additional ground of appeal before the CIT(A) which reads as under:-

> *"The Assessing Officer erred that the deduction u/s 57(iii) of the Income Tax Act should have been allowed while computing income of interest received on fixed deposit from bank and deposits with MSEB."*

10. The CIT(A) noted that the assessee had furnished return of income declaring total income of Rs.76,62,500/-, which was assessed under section 143(3) of the Act by the Assessing Officer accepting the income declared. In the appeal under consideration; the assessee contested treatment of interest received from bank and MSEB as income by the Assessing Officer. The assessee filed written submissions before the CIT(A) which are reproduced under para 3.1 at pages 2 to 6 of the appellate order. The CIT(A) noted that vide ground of appeal No.1, the assessee had contested the treatment of interest received from bank and MSEB of Rs.75,63,440/- being covered by the principle of mutuality and hence, not taxable. The CIT(A) applying the ratio laid down by the Apex Court in Bangalore Club Vs. CIT & Anr. (2013) 350 ITR 509 (SC) held the said issue to be against the assessee.

11. In respect of additional ground of appeal, which was raised i.e. deduction to be allowed under section 57(iii) of the Act while computing income of interest received on fixed deposit from bank and deposits from MSEB. The case of assessee before the CIT(A) was that additional ground of appeal has been raised in view of the decision of the Hon'ble High Court of Punjab & Haryana in the case of CIT Vs. Maruti Employees Co-operative House Building Society (2010) 320 ITR 254 (P&H). The assessee further claimed that in the return of income against the interest income of Rs.75,63,440/-, deduction @ 7.5% of 5,67,258/- was claimed and the balance sum of Rs.69,96,182/- was declared as income in the return of income filed. However, reference was made to the ratio laid down by the Pune Bench of Tribunal in assessee's own case in earlier year in ITA No.6/PN/1995. It was contended by the learned Authorized Representative for the assessee before the CIT(A) that fixed deposits kept with the bank were derived from entrance fees of members at the time of admission into Club and the management of Club was obliged to use funds on investment made from entrance fees into fixed deposits under the above mandate of providing facilities, entertainment, upkeep of the club, etc., for the members. The assessee claimed that there existed nexus between entrance fees, deposits and ensuing obligations leading to various expenses required to be incurred from year to year. The assessee further pleaded that the said interest income was not taxable under the head 'Income from other sources' as income, after considering the deduction under section 57(iii) of the Act worked out to negative sum, as per the following details.

"1	*Interest received for the year*		*Rs. 75,63,440/-*
2.	*Less:*		
	i) Operating expenses	*65,59,372*	
	ii) Repairs, maintenance	*81,67,190*	*Rs.1,47,26,562/-*
			(-) Rs.71,63,122/-

12. It was stressed by the learned Authorized Representative for the assessee before the CIT(A) that the members have contractual expectations of promotion of sports and proper and well equipped entertainment facilities from the club and the interest income goes towards the upkeep, maintenance and promotion of various facilities and that the surplus after giving away to various expenses ends up to a reverse sum, making it discernible that nothing can be earned out of interest receipts for tax and the deficit on the interest income for the year was Rs.71,63,122/-. The CIT(A) taking note of the provisions of section 57(iii) of the Act observed that the proposition which clearly emerged should be considered, for allowing expenditure under section 57(iii) of the Act. Firstly, the expenditure must not be in the nature of capital expenditure or personal expenses of the assessee, secondly, expenditure must have been laid out or expended wholly and exclusively for the purpose of making or earning 'Income from other sources'; thirdly, the purpose of making or earning said income must be the sole purpose for which the expenditure must have been incurred namely the expenditure should not have been incurred for such purpose as also for another purpose or for a mixed purpose; fourthly, the connection between the expenditure and the earning of income need not be direct, but the expenditure that must have been incurred for the purpose of earning that income, should have some nexus between the expenditure and earning of income. The CIT(A) was of the view that the requirement under section 57(iii) of the Act was expenditure should have been incurred for the purpose of making or earning such income. He further held that it would not suffice to establish merely that the expenditure was incurred in order indirectly to facilitate the carrying on the activities, which was the source of income; the nexus must necessarily be between the expenditure incurred and income earned. Reliance was placed on

the ratio laid down by the Hon'ble Supreme Court in Seth R Dalmia Vs. CIT (1977) 110 ITR 644 (SC) and the Hon'ble Bombay High Court in Smt. Zubedabai Vs. CIT (1984) 148 ITR 104 (Bom). He further observed as under:-

> *"4.1.1 It is well settled that deduction u/s 57 can be allowed if there is a nexus between the receipt of income and expenditure claimed as held in CIT Vs. Sponge Iron India Ltd. (1993) 201 ITR 770 (AP). Thus the expenditure laid out wholly and exclusively for the purpose of earning such income has first to be ascertained and then apportioned among several heads of income as was held in the case of CIT Vs. New India Investment Corp. Ltd. (1978) 113 ITR 778 (Cal)."*

13. The CIT(A) was of the view that it is the purpose of expenditure that was relevant in determining the applicability of section 57(iii) of the Act and that purpose must be making or earning the income. Where the assessee was a club and as per clause (I) of its Memorandum and Articles of Association, it invests and deals with money of the company not immediately required upon such securities and in such manner as determined from time to time. The CIT(A) further noted that the said money basically arose from entrance fees of the members at the time of their admission into club and the amounts collected were placed as fixed deposits and the interest earned thereon was stated to be spent towards maintenance, upkeep and promotion of facilities provided by the assessee club. He observed that expenditure incurred by the assessee was not towards earning of interest income but was spent on general upkeep, maintenance and promotion of various facilities as provided by the assessee to its members. He concluded by holding that the said expenditure laid out by the assessee had not been wholly and exclusively laid out for the purpose of making or earning income which was chargeable under the head 'Income from other sources'. The contention of assessee that nexus existed between the earning of income and incurring of various expenses was not substantiated by material facts brought on record. Thus, the claim of assessee in allowing deduction under

section 57(iii) of the Act while computing interest income was found to be not tenable. He further distinguished the reliance placed upon by the assessee on the decision of the Hon'ble High Court of Punjab & Haryana in CIT Vs. Maruti Employees Co-operative House Building Society (supra). He noted that in the said case, housing society was accepting deposits from its members for maintenance of houses of members. The said deposits were earning interest and out of said interest income, expenses were incurred for the maintenance of houses of members. Thus, the interest derived on deposits was used to discharge the liability of maintaining their houses. He further distinguished the expenses incurred by the assessee and held that there was no nexus between the deposits in the form of entrance fees i.e. earning of income and expenses incurred and also the assessee was engaged in incurring expenses on various other different types of activities as enshrined in the Memorandum and Articles of Association. In the absence of establishing nexus between expenditure incurred and the income earned, the CIT(A) held that the decision relied upon by the assessee was distinguishable on facts. In view thereof, the additional ground of appeal raised by the assessee was dismissed.

14. The assessee is in appeal against the order of CIT(A).

15. The first issue raised before us is in respect of assessability of interest income received from bank and MSEB to the tune of Rs.75,63,440/- in the hands of assessee being not governed by the principle of mutuality. The learned Authorized Representative for the assessee fairly pointed out that the said issue is covered against the assessee by the order of Apex Court in Bangalore Club Vs. CIT & Anr. (supra). In view thereof, we hold that interest income received

from bank and MSEB to the tune of Rs.75,63,440/- is not governed by the principle of mutuality.

16. In respect of second issue i.e. claim of deduction under section 57(iii) of the Act, the learned Authorized Representative for the assessee referred to the activities undertaken by the assessee club. He further stated that the assessee club admits members to its club and on admission, entrance fees is charged, which varies from year to year and 60% of the entrance fees is required to be put in club's cash reserve account. Reference was made to the clauses in Memorandum and Articles of Association dated 01.10.2008. He referred to different terms of the said Memorandum and Articles of Association of assessee club. He further pointed out that expenses were incurred by the assessee club for maintenance of club, which in turn, results in attracting more members and hence, the said expenditure is to be allowed against interest income earned on the fixed deposits as the said fixed deposits germinates from entrance fees received by the assessee. The case of learned Authorized Representative for the assessee before us that since the club was providing better facilities, which in turn, was possible by incurring various expenses in maintaining lawns, sports facilities, club facilities, etc., then there was nexus between the interest earned on the fixed deposits which originated from entrance fees and expenditure incurred for upkeep of the assessee club. He stressed that in order to attract new members and charge entrance fees to them, which in turn, would result in accumulation of funds in fixed deposits, was possible only because the assessee was spending on upkeep of club and various facilities provided to the members. The learned Authorized Representative for the assessee fairly pointed out that the Tribunal in ITA No.233/PN/1989 had allowed the claim of assessee i.e.

expenditure @ 7.8% against interest income. He fairly admitted that the said order of Tribunal was not traceable. However, the Tribunal in a later decision in ITA No.6/PN/1995 and in ITA No.476/PN/1999, relating to assessment years 1991-92 and 1995-96 relying on its earlier decision in ITA No.233/PN/1989, had held that the assessee was entitled to the claim of expenditure @ 7.5% of interest income as expenditure on earning that income. He further placed reliance on the ratio laid down by the Hon'ble High Court of Punjab & Haryana in CIT Vs. Maruti Employees Co-operative House Building Society Ltd. (2010) 320 ITR 254 (P&H). Our attention was drawn to the pages 142 and 143 of Paper Book, wherein segmental details of various receipts are provided and thereafter, the assessee has computed apportionment of expenditure against the said receipts earned from different sources. Our attention was further drawn to the Balance Sheet as on close of the year which is placed at pages 105 and 106 of Paper Book and it was pointed out that General Reserve had opening balance of Rs.17.07 crores and entrance fees received during the year were Rs.2.12 crores, placed at page 107 of Paper Book, the learned Authorized Representative for the assessee pointed out that total investment in Fixed Deposits was to the tune of Rs.7.31 crores. He further stressed that for claiming the deduction under section 57(iii) of the Act, expenditure could be direct or indirect expenditure. In this regard, he placed reliance on the ratio laid down by the Hon'ble High Court of Gujarat in CIT & Anr. Vs. Kasturbhai Lalbhai & Anr. (1968) 70 ITR 267 (Guj) and the Hon'ble Bombay High Court in CIT Vs. H.H. Maharani Shri Vijaykuverba Saheb of Morvi (1975) 100 ITR 67 (Bom). He further pointed out that majority of expenditure claimed was on establishment and administration and some expenses had to be allowed in the hands of assessee. In respect of rule of consistency which has been propounded by the Hon'ble Supreme Court in

Radhasoami Satsang Vs. CIT (1992) 193 ITR 321 (SC), he pointed out that percentage of expenditure could be deviated from earlier year by allowing the same at 7.5%.

17. The learned Departmental Representative for the Revenue pointed out that the assessee in return of income had declared income of Rs.76,62,500/-. He referred to the computation of income placed at page 1 of Paper Book, wherein the assessee himself had deducted expenses @ 7.5% as per earlier order of ITAT. The learned Departmental Representative for the Revenue here stressed that the Assessing Officer had assessed the income at the returned income. He further pointed out that before the CIT(A) for the first time, the issue was raised of mutuality. The assessee though in the return of income had accepted the fact that interest income was taxable and also in all the earlier years, the said income was held to be taxable but before the CIT(A), the assessee further raised an additional ground of appeal to allow higher expenditure under section 57(iii) of the Act. He further pointed out that the assessee did not contest the ground of mutuality before the CIT(A). Referring to provisions of section 57(iii) of the Act, he pointed out that section provides deduction on account of expenditure which is laid out or expended wholly and exclusively for earning of income. He further stated that in 1922 Act, these words were missing i.e. “wholly and exclusively”. Section 12 of 1922 Act talks of solely “for the purpose of making or carrying on the business”, hence the decisions relied upon by the learned Authorized Representative for the assessee on the Hon’ble High Court of Gujarat in CIT & Anr. Vs. Kasturbhai Lalbhai & Anr. (supra) and the Hon’ble Bombay High Court in CIT Vs. H.H. Maharani Shri Vijaykuverba Saheb of Morvi (supra) being earlier law, was not applicable. He further relied on

the decision of the Hon'ble Supreme Court in Seth R. Dalmia Vs. CIT (1977) 110 ITR 644 (SC) and the Hon'ble Bombay High Court in Smt. Zubedabai Vs. CIT (1984) 148 ITR 104 (Bom). He further referred to the order of CIT(A) at page 10, where he refers to both these decisions of Apex Court and the jurisdictional High Court. He stressed that in view of the same, expenses incurred should be direct for earning the income against which the deduction is claimed under section 57(iii) of the Act. He stressed that indirect expenses were not to be allowed as deduction. He then, referred to the decision of High Court of Calcutta in CIT Vs. New India Investment Corporation Ltd. (1978) 113 ITR 778 (Cal) that first expenses had to be ascertained and then, apportionment, if any, had to be carried out. He then referred to the aims of club mentioned in the Memorandum and Articles of Association and also pointed out that out of total revenue of Rs.9.94 crores, interest income was only to the extent of Rs.75.63 lakhs; hence, percentage of interest income to the total income was 7.6%. He stressed that first onus was on the assessee to explain the expenditure incurred for earning interest income. The other expenses which are attributed to club activities which are not taxable in the hands of assessee because of principle of mutuality, cannot be allowed as deduction against interest income earned on fixed deposits. The first ground on which the same needs to be denied that the assessee had not maintained any separate details in this regard. Secondly, expenditure to the tune of 7.5% expenses has been allowed and accepted by the assessee in all the earlier years. He further pointed out that if we take turnover as basis, then also it works out to 7.5% which has been so allowed in the hands of assessee. Our attention then was invited to the details / break-up of expenses filed by the assessee vis-à-vis total expenses incurred as per audited Profit and Loss Account. He further relied on deliberations of CIT(A) in para 4.1.1 of the

appellate order. The learned Departmental Representative for the Revenue further pointed out that the assessee in assessment year 2009-10 had not declared the said interest income on the principle of mutuality but the Assessing Officer added net income in the hands of assessee after allowing deduction @ 7.5% of interest income. It is before CIT(A), issue of higher expenditure was raised to be allowed.

18. The learned Authorized Representative for the assessee in rejoinder pointed out that it was the duty of Assessing Officer to correctly allow the claim of assessee in case some error has been made by the assessee in its computation of income. Reliance was placed on the ratio laid down by the Hon'ble Bombay High Court in Ahmedabad Electricity Co. Ltd. Vs. CIT & Godavari Sugar Mills Ltd. Vs. CIT (1993) 199 ITR 351 (Bom) and the Hon'ble Supreme Court in National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC). He further stressed that fresh claim could be made before the CIT(A) and the offering of income by the assessee could not prejudice its right to claim the aforesaid expenditure. Thereafter, he pointed out that expression "wholly and exclusively" used in section 57(iii) of the Act, does not exclude direct or indirect expenses. He relied on the commentary of Chaturvedi & Pithisaria at page 4540 for the meaning of said term under section 37(1) of the Act. He admitted that under the old Act, section 12 of 1922 Act, the word used was 'solely' and the same was interpreted by the High Courts. The next plea raised by the learned Authorized Representative for the assessee was that the maintenance and operation of club has not been negated by the authorities below, hence indirect expenses are to be allowed in the hands of assessee. In the final arguments, the learned Authorized Representative for the assessee pointed out that the total expenditure

was Rs.6.64 crores including depreciation and expenditure if allowed @ 7.5% works out to Rs.50 lakhs.

19. The learned Authorized Representative for the assessee stressed that the claim of assessee was first no doubt, made before the CIT(A) for the first time, but since it did not require any investigation into additional evidence and being a pure question of law, merits to be allowed. The learned Authorized Representative for the assessee stressed that the claim made in the return of income had been extended which was arising out of documents / accounts, which already were on record and hence, no fresh plea was made. The learned Authorized Representative for the assessee also explained the proposition laid down by the Hon'ble Bombay High Court in M/s. Ultratech Cement Ltd. Vs. The Addl.CIT in Income Tax Appeal No.1060 of 2014, judgment dated 18.04.2017 and pointed out that 80IA deduction was claimed first time before the Tribunal and even audit report was not available and hence, the plea of assessee was not accepted.

20. The learned Departmental Representative for the Revenue referred to page 24 of the decision of Hon'ble Bombay High Court in M/s. Ultratech Cement Ltd. Vs. The Addl.CIT (supra) and pointed out that the observation of the Hon'ble High Court was that where no material was brought on record that what material change had occurred to claim expenses, then the same is not to be allowed. He explained that in assessment year 2008-09, there was no claim before the Assessing Officer. Before the CIT(A), for the first time, this claim was made. In assessment year 2009-10, whole amount was shown as not taxable, wherein the CIT(A) in para 3.1 says loss of Rs.70 lakhs.

21. We have heard the rival contentions and perused the record. The second issue which has been raised before us is on without prejudice to ground of appeal No.2 i.e. first issue raised in the present appeal. We have already decided the same and dismissed the claim of assessee. By way of second issue, the assessee is seeking proper and adequate deduction under section 57(iii) of the Act from interest income received from bank and MSEB to the tune of Rs.75,63,440/-. The assessee in the computation of income, copy of which is placed at page 1 of Paper Book had declared the interest income received from bank and MSEB after deducting 7.5% of expenses (as held in ITA No.6/PN/1995, order dated 11.07.2001) and included the same in total income and computed the tax payable on the same, which was also paid. In addition, the assessee declared income from venue charges from member guests and dinner receipts from member guests along with other miscellaneous receipts. The case of assessee was picked up for scrutiny and the Assessing Officer in the order passed under section 143(3) of the Act accepted the income declared by assessee at Rs.76,62,495/- and assessed the same. For the first time before the CIT(A), the assessee filed grounds of appeal which are reproduced under para 4 of our order, wherein the plea raised was that interest received from bank and MSEB was receipt forming an integral part of mutual receipts and hence, was not taxable in its hands. The assessee also raised an additional ground of appeal before the CIT(A) claiming that the Assessing Officer had erred in not allowing deduction under section 57(iii) of the Act and the same should be allowed while computing interest income received on fixed deposits from bank and deposits with MSEB. The CIT(A) decided the first issue against the assessee following the decision of Apex court in Bangalore Club Vs. CIT & Anr. (supra). He further dealt with additional grounds of appeal raised by the assessee, where the plea of

assessee was that fixed deposits kept with bank were derived from entrance fees of members at the time of admission into club and there was an obligation on the assessee club to invest the said funds received from entrance fees into fixed deposits. The assessee further claimed that there existed nexus between entrance fees, deposits and obligation of providing facilities, entertainment and upkeep of club for the members. Before the CIT(A), against the interest income of Rs.75,63,440/- the assessee claimed operating expenses of Rs.65,59,370/- and repairs and maintenance of Rs.81,67,190/-, totaling Rs.1,47,26,562/-. The CIT(A) taking note of provisions of section 57(iii) of the Act observed that the expenditure should have been incurred for the purpose of making or earning such income and there should be nexus between expenditure incurred and income earned. In the absence of the same, the CIT(A) held the assessee not entitled to claim the said deduction under section 57(iii) of the Act.

22. The case of assessee before us is slightly changed. Though before the CIT(A), the assessee claimed expenditure of Rs.1,47,26,562/-; however, before us the assessee has prepared segmental profit statement i.e. against receipts under different heads, it has apportioned the expenditure as per details furnished at page 142 of Paper Book for assessment year 2008-09 and at page 143 of Paper Book for assessment year 2009-10. As against the income of Rs.75,63,440/-, which admittedly is 7.60% of total revenue of club i.e. Rs.9,94,41,064/-, the apportioned expenditure is calculated at Rs.50,13,923/- out of total expenditure of Rs.8,46,61,954/-. The assessee has pointed out that net surplus under the head ‘Interest income’ would be Rs.25,39,517/- i.e. percentage of segmental profit is 33.71%. Similarly, in assessment year 2009-10, against interest income of Rs.80,44,768/- which is 7.58% of total receipts of

assessee at Rs.10.61 crores, the assessee has claimed expenditure of Rs.65,97,836/- out of total expenditure of Rs.9.85 crores. The net surplus shown under the head 'Interest income' is Rs.14,46,932/- i.e. segmental profit of 17.99%. The perusal of heads of expenditure would reflect the assessee to have apportioned the expenditure booked under the following heads:-

a) Labour charges
b) Power and Water charges OH
c) Consumption of General Stores
d) Operating Expenses (others)
e) Repairs, Maintenance
f) Rent, Rates and Taxes
g) Insurance
h) Other Expenditure
i) Expenses for Repairs, Renovation
j) Depreciation

23. Taking into consideration the details filed by the assessee, we find that the claim of assessee is varying from stage to stage. Before the Assessing Officer, the assessee had shown interest income as 'Income from other sources' under section 56 of the Act. Thereafter, it had claimed deduction under section 57(iii) of the Act on account of expenditure wholly and exclusively laid out for earning of interest income @ 7.5% i.e. Rs.5,67,258/-. The said expenditure as claimed by the assessee in the return of income has been allowed in entirety by the Assessing Officer. However, before the CIT(A), the assessee raised an additional ground of appeal on the basis that it was the duty of authorities to compute the correct income in the hands of assessee and claimed deduction under section 57(iii) of the Act at Rs.1.47 crores. Now, before us, the assessee has apportioned the expenditure and claimed total expenditure of Rs.50,13,923/-. The assessee has not filed any basis for the said apportionment of expenditure under different heads of receipts. Without going into the same, we find that the assessee is changing its stand from stage to stage for claiming deduction under section 57(iii) of the Act. However, the case of assessee remains constant that

the interest income has to be assessed under section 56 of the Act, against which it has claimed expenditure under section 57(iii) of the Act.

24. Now, coming to section 57(iii) of the Act, which provides as under:-

> *"57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:-*
>
> *(i)…..*
> *(ii)….*
> *(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;*
> *(iv)…."*

25. The Statute provides that against the income chargeable under head 'Income from other sources', the deduction on account of expenditure, not being in the nature of capital expenditure, laid out or expended wholly or exclusively for the purpose of making or earning such income is deductible. In other words, the assessee has to establish its claim of expenditure within parameters "laid out or expended wholly and exclusively for the purpose of making or earning such income". Both the learned Authorized Representatives before us has placed reliance on different decisions of the Hon'ble Apex Court or various other High Courts to lay emphasis on the meaning of terms used in section 57(iii) of the Act.

26. The Hon'ble Supreme Court in Seth R Dalmia Vs. CIT (supra) relied upon by the learned Departmental Representative for the Revenue, where the provisions of the old Act i.e. section 12 was considered by the Hon'ble Supreme Court and it was held as under:-

> *"An analysis of this sub-section would show that in computing the income under this head the assessee is entitled to deduction in respect of the expenditure incurred solely for the purpose of earning such income, provided the expenditure is not of a capital nature and does not include any personal expenses incurred by the assessee. In other words, before this provision could apply, the following conditions must be fulfilled:*

(i) the expenditure must have been incurred solely and exclusively for the purpose of earning income or making profit;

(ii) the expenditure should not be in the nature of a capital expenditure ;

(iii) the amount in question should not be in the nature of personal expenses of the assessee;

(iv) that the expenditure should be incurred in the accounting year; and

(v) there must be a clear nexus between the expenditure incurred and the income sought to be earned."

27. Further, the Hon'ble Bombay High Court in CIT Vs. H.H. Maharani Shri Vijaykuverba Saheb of Morvi (supra) had also while considering the provisions of section 12(2) of 1922 Act held that *If with the borrowings that were made, a source of income like shares or securities was acquired, then obviously the interest paid on such borrowings was a permissible deduction under section 12(2) of the 1922 Act and if that be so, then interest paid over the borrowings made for the purpose of maintaining or preserving the income should also be deductible under the said provision.* In the facts before the Hon'ble Bombay High Court, the assessee had claimed deduction against dividend income on account of dividend and interest on securities on account of interest paid on borrowals made for meeting liability of estate duty. The trustees paid the estate duty by borrowing money and claimed interest as deductible against dividend and interest on securities, which formed part of trust property. The Hon'ble Bombay High Court allowed the said claim because the expenditure was incurred for the purpose of preserving particular source of income. The learned Authorized Representative for the assessee relying on the said decision has pointed out that in the case of assessee also, source of interest income is the club activities carried on, wherein expenditure is incurred for upkeep of the club. In order to attract more persons as new members, the amount received from new members

as membership fees is parked in fixed deposits, on which interest is earned and for attracting the members whatever expenditure is incurred on the activities of club, its preservation, its upkeep, etc. is for the purpose of earning interest income and hence, part of the said expenditure merits to be allowed in the hands of assessee.

28. Now, coming to the next reliance placed upon by the learned Authorized Representative for the assessee on the Hon'ble High Court of Punjab & Haryana in the case of CIT Vs. Maruti Employees Co-operative House Building Society (supra), wherein the interest was earned on deposits made by the members of society, which was floated for maintenance of their houses and the expenditure incurred on account of maintenance of houses was allowed against interest income i.e. the said expenditure was allowed holding that interest was derived on deposits made by the members of society requiring the assessee to discharge the liability of maintaining their houses. It was held that the said expenditure was to be treated as part and parcel of contractual agreement between the members of society and the society itself.

29. The Hon'ble High Court of Gujarat in CIT & Anr. Vs. Kasturbhai Lalbhai & Anr. (supra) while deciding the issue of allowability of expenditure admissible under section 12(2) of 1922 Act had held that the same must be incurred directly or indirectly to facilitate earning of income, while interpreting the terms "in order indirectly to facilitate carrying on their business". The learned Authorized Representative for the assessee has placed heavy reliance on all these decisions which related to interpretation of terms used in section 12(2) of the old Act, except the decision of Hon'ble High Court of Punjab & Haryana in the case

of CIT Vs. Maruti Employees Co-operative House Building Society (supra). However, the claim of assessee is under the 1961 Act, wherein the terms used in sub-section (iii) to section 57 of the Act are at variance to the terms used in earlier section. The requirement of section 57(iii) of the Act is that expenditure should be laid out or expended wholly and exclusively for the purpose of making or earning such income.

30. The Hon'ble Supreme Court in CIT Vs. Rajendra Prasad Moody and in CIT Vs. Raghunandan Prasad Moody (1978) 115 ITR 519 (SC) had observed as under:-

> *"What section 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income."*

31. Applying the said ratios laid down by various Courts, we find that the assessee must have incurred expenditure for the purpose of earning income from other sources; this is the condition precedent for allowing deduction under section 57(iii) of the Act. In other words, it is incumbent upon the assessee claiming the said expenditure to establish nexus between the expenditure and income and in the absence of the same, the assessee is not entitled to the claim of expenditure under section 57(iii) of the Act. Even if we see the decision of the Hon'ble High Court of Punjab & Haryana in the case of CIT Vs. Maruti Employees Co-operative House Building Society (supra), which has been heavily relied upon that there is direct nexus between expenditure claimed and interest earned on the deposits. The Co-operative housing society was formulated for the purpose of maintenance of houses. The members were the owners of houses who require the maintenance and out of interest income, the Co-

operative society was incurring expenses for maintenance of houses of members and hence, the decision by the Hon'ble High Court to allow the same as deductible from interest income.

32. Now, coming to the facts of the present case, the assessee claims that club activities have nexus with earning of interest income. For determining the applicability of section 57(iii) of the Act what has to be seen is the purpose of expenditure and the purpose must be for earning the income. The link is between expenditure incurred and income earned. To be eligible for deduction under section 57(iii) of the Act, expenditure incurred should be linked to earning of income. Where the assessee is running club and is providing facilities to its members by way of general upkeep of club, its maintenance and provision of various facilities to the members of club, then the same is against the membership collected from members, for which the members are charged. The assessee had so claimed it in its audited accounts. However, the profit arising from the same is not taxable in the hands of assessee on principle of mutuality. The assessee in the return of income had offered interest earned on FDRs as 'Income from other sources'. However, by way of additional ground of appeal raised before the CIT(A), the assessee wants to change the ground position i.e. it has now argued at length that certain percentage of expenditure incurred by the assessee club is attributable to the interest income earned. The case of assessee has already been dealt with in the paras hereinabove. However, we find no merit in the plea of assessee as under the provisions of section 57(iii) of the Act, the eligibility for deduction arises only if the expenditure has been laid out wholly and exclusively for the purpose of making or earning the income which is chargeable under the said head. There is no merit in the claim of assessee

that the expenditure which it is incurring for upkeep of the club and other facilities including the depreciation charged on various assets is to be proportionately allowed as expenditure under section 57(iii) of the Act since the interest earned on FDRs is linked to the membership fees charged at the time of joining of members. The learned Authorized Representative for the assessee has time and again pointed out that since it was providing such facilities it could attract more members and hence, more membership fees can increase in investment in FDRs and consequent increase in the interest on such FDRs, hence, the plea of enhanced deduction to be allowed against interest income under section 57(iii) of the Act. We find no merit in the aforesaid plea of assessee, in view of the strict provisions of section 57(iii) of the Act. The assessee has failed to establish nexus between earning of interest income and the proportionate expenditure it wants to be allocated. In the absence of the same, we find no merit in the claim of assessee and the same is rejected.

33. Before parting, we may also refer to the ratio laid down by the Hon'ble High Court of Madras in Procon Systems P. Ltd. Vs. ITO (2008) 296 ITR 636 (Mad), wherein the issue was also the claim of deduction to be allowed against income from other sources. The assessee was engaged in the manufacturing and export of computer software and had obtained loans which were deposited in its bank account. The assessee filed the return of income for assessment year 2001-02 declaring Nil income. The assessment was completed after rejecting the claim of assessee that interest paid on loans had direct relation to the interest received and had to be allowed as deduction from interest income. The Tribunal upheld the order of Assessing Officer. The Hon'ble High Court of Madras observed that the assessee had admitted that the expenditure on account of

interest had already been debited to the Profit and Loss Account, so there was no separate deduction possible. The Hon'ble High Court thus, held that *when the assessee had already debited the expenditure in the Profit and Loss Account, it is not proper for the assessee to claim a separate deduction.*

34. In the facts of the present case also, the assessee had already debited the expenditure to the Profit and Loss Account and had accordingly filed the return of income. However, before the CIT(A), for the first time, it raised the issue of claim of deduction under section 57(iii) of the Act on account of proportionate allocation of expenditure to earning of interest income from FDRs and MSEB. The assessee is not entitled to any claim of deduction under section 57(iii) of the Act against interest income from MSEB and in respect of interest income from FDRs, the assessee is not entitled to any further claim except the claim to the extent of 7.5% of interest income claimed by the assessee in its return of income which has been allowed to the assessee in earlier years and has not been disturbed.

35. The expenditure which has been claimed by the assessee is for the purpose of upkeep of club and also for maintenance and promotion of various facilities, which the assessee is bound to provide to its members against which the assessee has received receipts totaling Rs.9.94 crores / Rs.10.61 crores in the respective years. The assessee before us has failed to establish the nexus between expenditure incurred under various heads including depreciation and has also failed to justify apportionment of expenditure to earning of interest income and in the absence of nexus being established, there is no merit in the claim of assessee. In the absence of assessee establishing the expenses attributable to club activities which are outside the purview of Income Tax on the

principle of mutuality cannot be attributed as deduction under section 57(iii) of the Act against interest income earned on fixed deposits. The assessee has not maintained any segmental details in this regard and has only apportioned the expenditure that also to the extent of 67% of income earned. First, the assessee was claiming expenditure and the basis was expenditure as percentage of interest income i.e. @ 7.5%. Now, the assessee has raised the claim of allowing 67% of income to be deducted as expenditure i.e. without any basis and hence, the said claim of assessee cannot be allowed where the assessee has failed to establish its case of incurring the expenditure for the purpose of being laid out or expended wholly and exclusively for the purpose of making or earning such income. In any case, the Tribunal in earlier year starting from assessment year 2001-02 onwards had held the assessee to be entitled to claim the expenditure against interest income to the tune of 7.5% of interest income, which has been allowed and accepted by the assessee / Assessing Officer in all the earlier years. The assessee / Revenue has not filed any appeal against the order of Tribunal in allowing 7.5% of income as expenditure. In case, for the year under consideration, where the total revenue earned by the assessee is about Rs.9.94 crores, interest income is also to the extent of Rs.75.63 lakhs and the percentage of interest income to the total income works out to 7.6%. If the turnover is taken as the basis for working out the percentage of expenditure, then the same works out to 7.6% and expenditure to the extent of 7.5% has been allowed to the assessee. The learned Authorized Representative for the assessee had made several submissions with regard to fresh claim being made before the CIT(A). We have already decided the issue vis-à-vis fresh claim made before the CIT(A) and hence, we are not addressing the case laws relied upon by the assessee in this regard.

36. Before parting, we may also point out that the assessee has time and again stressed that the effect of various club activities has increased in entrance fees and hence, the increase in expenditure for making new members from whom membership fees is to be charged. In this regard, the assessee has filed tabulated details at page 144 of Paper Book, wherein from assessment year 2003-04, the entrance fees were as under:-

A.Y.	*FINANCIAL YEAR*	*ENTRANCE FEE (AS PER AUDITED BAL. SHEET*
		Rs.
2003-2004		*44,88,265*
2004-2005		*95,41,316*
2005-2006		*91,57,025*
2006-2007		*1,21,43,905*
2007-2008		*1,05,20,178*
2008-2009		*2,12,88,700*
2009-2010		*1,34,04,130*

37. The entrance fees in assessment year 2003-04 was Rs.44,88,265/- and in assessment year 2007-08, it had raised to Rs.1,05,20,178/-. In all these years, expenditure to the extent of 7.5% of income has been allowed in the hands of assessee. During the year, entrance fees at Rs.2.12 crores and in assessment year 2009-10 to the tune of Rs.1.34 crores. In view of the above said facts and circumstances, we find no merit in the plea of assessee in this regard and the same is dismissed. Accordingly, we hold that the assessee is not eligible to claim any deduction under section 57(iii) of the Act over and above the deduction earlier allowed by the Tribunal in assessee's own case to the extent of 7.5%. The second issue raised by the assessee is thus, dismissed.

38. The facts and issues in ITA No.1069/PUN/2014 are identical to the facts and issues in ITA No.1068/PUN/2014 and our decision in ITA No.1068/PUN/2015 shall apply *mutatis mutandis* to ITA No.1069/PUN/2014.

39. In the result, both the appeals of assessee are dismissed.

Order pronounced on this 23rd day of January, 2018.

Sd/-	**Sd/-**
(ANIL CHATURVEDI)	**(SUSHMA CHOWLA)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 23rd January, 2018.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-II, Pune;
4. The CIT-II, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune