

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ' B ' अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" B " BENCH, AHMEDABAD

(Through web-based video conferencing platform)

BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT  
AND  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

| Sl. No(s) | ITA No(s) / CO No(s)                      | Assessment Year(s) | Appeal(s) / Cross Objection by Appellant vs. Respondent |   |
|-----------|---|--------------------|---|---|
|           |   |                    | Appellant(s)  | Respondent(s)   |
| 1.        | ITA No. 1809/Ahd/2019                     | 2014-15            | The DCIT Circle-4(1)(2) Ahmedabad (revenue)             | The Sports Club of Gujarat Ltd. Sardar Patel Stadium Navrangpura, Ahmedabad (assessee) PAN: AA ACT 7280 N |
| 2.        | CO No. 37/Ahd/2020 (in ITA No. 1809/A/19) | 2014-15            | By Assessee-applicant                                   | By Revenue  |
| 3.        | ITA No. 1917/Ahd/2019                     | 2015-16            | By Revenue  | By Assessee   |
| 4.        | CO No. 43/Ahd/2020 (in ITA No. 1917/A/19) | 2015-16            | By Assessee-applicant                                   | By Revenue  |

|               |  |
|---------------|--|
| Assessee by : | Ms. Kinjal Shah, CA<br>Shri Anil R. Shah, AR |
| Revenue by :  | Shri C.S. Sharma, Sr.DR                      |

सुनवाई की तारीख/Date of Hearing : 16/02/2022  
घोषणा की तारीख /Date of Pronouncement: 21/02/2022

**आदेश/ORDER**

**PER PRAMOD M. JAGTAP, VICE-PRESIDENT**

These two appeals are preferred by the Revenue against two separate orders passed by the Ld.CIT(A)-8, Ahmedabad ["CIT(A)"] dated 20/09/2019 and 15/10/2019 for Assessment Years (AYs) 2014-15 & 2015-16

respectively and since common issues are involved therein, the same have been heard together and are being disposed of by a single consolidated order along with the corresponding Cross Objections filed by the Assessee being Nos.37/Ahd/2020 & 43/Ahd/2020 for the sake of convenience.

2. First we will take up the Revenue's appeal for AY 2014-15 being ITA No.1809/Ahd/2019 in which the following grounds are raised by the Revenue:

1. *Whether the Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.2,09,81,941/- on account of Guest fees/Income from hire of rooms/Hire charges in respect of club properties / Housie participation fees on the ground that temporary members are not eligible to share surplus on any dissolution of club and principal of mutuality is not acceptable for such members.*
2. *Whether the Ld.CIT(A) has erred in law and on facts in deleting the disallowance of expenses of Rs.7,46,000/- u/s.57(iii) of the income Tax Act, 1961.*

3. The assessee, in the present case, is a company which is engaged in providing various services to the members and their guests through Club as mutual association. The return of income for the AY 2014-15 was filed by it on 29/09/2014 declaring a total income of Rs.71,05,140/-. In the assessment completed u/s.143(3) of the Income Tax Act, 1961 ("the Act") vide an order dated 26/07/2016, the total income of the assessee was determined by the Assessing Officer at Rs.3,07,01,980/- after making *inter alia* addition of Rs.2,09,81,491/- on account of Guests fees from member, Hire charges, Income from rooms and Housie participation fees and Rs.7,46,000/- on account of disallowance of deduction claimed by the assessee u/s.57(iii) of the Act under the head "income from other sources".

4. Against the order passed by the Assessing Officer u/s.143(3) of the Act for AY 2014-15, an appeal was filed by the assessee before the Ld.CIT(A) challenging the additions made by the Assessing Officer to its total income and after considering the submissions made by the assessee as well as the material available on record, the Id.CIT(A) deleted the addition of Rs.2,09,81,941/- made by the Assessing Officer on account of Guests fees from member, Hire charges, Income from rooms and Housie participation fees for the following reasons given in paragraph No.5 of his impugned order.

*“5. **Ground No.1** of the appeal pertain to addition of Rs.2,09,81,941/- towards receipt from outsiders/temporary members on account of guest fees, income from hiring of rooms, higher charges in respect of club properties and housie fees totalling to Rs.20981941/-. AO treated this as income by holding that these receipts are not covered by the concept of mutuality because they were not received from the permanent members who are eligible for the ultimate benefits upon dissolution of the club. AO has discussed this issue in para 6 of the impugned order and has added the same on the basis of the additions made in earlier year from A.Y. 2007-08 to A.Y. 2013-14. In the course of appellate proceedings, the Ld. AR contended that the issue is covered in favour of them by the orders of Hon'ble ITAT, Ahmedabad on the very same issue pertaining to A.Y. 2005-06 to A.Y.2010-11 and for subsequent A.Ys. The CIT(A) have deleted same additions following the orders of Hon'ble ITAT. The appellant filed the copies of the orders of Hon'ble ITAT in this regard pertaining to A.Y. 2005-06, 2008-09, 2009-10, 2010-11 and order of CIT(A) pertaining to A.Y. 2011-12, 2012-13 and A.Y. 2013-14. In the order pertaining to A.Y. 2013-14 my predecessor CIT(A) while allowing the appellant's appeal on the very same issues have held as below:*

*“4.1 **Ground No. 1 & 2** is against addition of guest fess of Rs.9,71,651/- Income from hire of rooms of Rs.1,56,80,054/- Hire charges in respect of club properties at Rs.20,95,401/- and housie participation on fess of Rs.37,61,286/- aggregating to Rs.2,25,08,392/- received from outsider/not regular members or temporary members. The A.O. after considering the submission of the assessee held that since these outside parties/temporary members are not eligible to share surplus on dissolution of the club, the principle of mutuality is not applicable. The A. O. also*

*rejected assessee's contention that on same issue and on similar facts & contention, Hon'ble ITAT Ahmedabad in appellant's own case for A.Y. 03-04 to A.Y. 07-08 directed the revenue to delete the .addition.*

*During the appeal proceedings the AR of the appellant submitted as under:*

*"2. We respectfully submit that this issue is covered in our favour in our own case in earlier assessment years 2003-04 to A.Y. 2012-13. We enclose orders of Hon. ITAT, Ahmedabad for A.Y. 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08 and also orders of Hon. CIT (A) for AY 2008-09, 2009-10, 2011-12 & 2012-13 in our own case deciding the identical issue in our favour.*

*3. We therefore request your Honour to delete the additions of Rs.2,25,08,392/- made by the AO and oblige."*

*It is noted that Hon'ble Ahmedabad 'B' Bench in appellant's own case for A.Y. 03-04, 04-05 in ITA No.2793/Ahd/2006 and in ITA No.1398/Ahd/2007 respectively vide order dt. 30/11/09 deleted the addition made for guest fees, Income from rooms and lawn booking charges. The Hon'ble ITAT considered its own order dt. 23/02/07 in the case of Rajpath Club Ltd. in ITA No.2830/Ahd/2006 related to A.Y. 03-04 and appellant's own case for A.Y. 66-67, 67-68, to hold that income from rooms and lawn booking charges are not taxable while guest fees in view of appellant's own case is not taxable. Subsequently Hon'ble ITAT Ahmedabad 'B' bench in appellant's case for A.Y. 05-06 & 07-08 in ITA No.4075/Ahd/2008 and ITA No.1346/Ahd/2010 along with CO No.153/Ahd/2018 respectively vide order dt. 10/12/10 followed its earlier order dt. 30/11/09. Hon'ble ITAT Ahmedabad 'B' Bench vide order dt. 11/01/13 for A.Y. 06-07 followed earlier order. My predecessor in appellant's own case for A.Y. 08-09 (order dt. 27/06/11 appeal no. CIT(A)XIV/Ac.Cir,8/178/2010-11), A.Y. 09-10 (order dt. 13/04/12 in appeal no.CIT(A)XIV/wd8(2)/160/2011-12) and in A. Y. 10-11 (order dt. 07/06/13 in appeal no.CIT(A)XIV/DCIT.Cir.8(OSD)/180/2012-13) after considering detailed explanation from appellant's, A.O.'s contention, and ratio of earlier year order held in favour of appellant for the issue of guest fees from member, hire charges of club property income from rooms fees and housie held that on the basis of principle of mutuality, no addition can be made.*

*Therefore, respectfully following the ratio of all these order, the A.O. is directed to delete the addition so made in aggregate of Rs.2,25,08,392/-. Accordingly, Grounds No.1 & 2 are allowed.*

*The facts of the case continue to be same, the reasons for the additions by the AO are also same and in fact, AO has also followed the earlier orders hence, respectfully following orders of the Hon'ble ITAT as above and relying upon the*

*decision of my Ld. Predecessor the impugned additions are deleted. **Ground No.1 of the appeal is allowed.***"

4.1. The Ld.CIT(A) also allowed relief to the assessee on the issue of disallowance of deduction made by the Assessing Officer under the head "income from other sources" u/s.57(iii) of the Act for the following reasons given in paragraph No.7 of his impugned order:

*"7. **Ground No.3** is related to disallowance of expense amounting to Rs.7,46,000/- towards interest income. AO has discussed the issue in para 7 of the order. Briefly, the facts of the case are that appellant claimed these expenses u/s. 57 of the Act from out of income from other sources. AO noted that since, these expenses are not directly related to the earning of interest and hence/disallowed the same. In the course of appellate proceedings appellant contended that this is recurring issue in their case and in the earlier years right from A.Y. 1996-67 to 1969-70 Hon'ble ITAT has allowed their appeal in the issue and in A.Y 2013-14 CIT(A) has allowed their appeal on the same issue by holding the following:*

*"4.2 The 3<sup>rd</sup> **ground of appeal** is against the disallowance of Rs.6,55,980/- being, expenses deductible against interest income. During the assessment proceedings the AO noted that,*

*(i) "The assessee in the computation of income claimed deduction of Rs.6,55,980/-from income from other sources. Accordingly the assessee was asked vide order sheet noting dated 17.07.2015 to justify the claim of deduction u/s. 57 of the act".*

*(ii) "The assessee vide letter dated 05.08.2015 furnished the following reply. " We lastly refer to your proposal of disallowing expenses u/s.57(1). On this issue a/so, we refer to the history of the assessment and appellate proceedings particularly since A.Y. 1966-67 to 2011-12 Hon. ITAT, in our own case for A.Y. 1966-67 to 1969-70 and Hon. CIT(A) in our own case for A. Y. 1986-87 to 1988-89 and also in A.Y,2010-11 has decided this issue in our favour and has allowed deduction @ 10% of interest income u/s. 57(1). In the light of the history and appellate proceedings, we request your goodself to allow deduction & 10% as claimed and oblige."*

*The A.O. rejected assessee's reply and held;*

"The above reply is duly considered but not acceptable. Sec. 57 deals with allowable deduction in case of income chargeable under the head "Income from other sources". Apart from this section there is no other section in the Income tax Act that allows deduction of any kind from income chargeable to tax under the provisions of section 56. Even under section 57, it is only section 57 (iii) that would be applicable or not applicable to the instant case as the other clauses are specific in nature. Sec. 57(iii) is the residuary clause of sec. 57 and Sec. 57(iii) states that the expenditure should not be in the nature of capital expenditure and should be laid out or expended **wholly and exclusively** for the purpose of making or earning such income. Thus the mandate of sec. 57(iii) is very clear and limited in its operation. That the expenditure claimed by the assessee is not in the nature of capital expenditure is not in doubt. The only crucial and critical question that would determine whether the interest expenditure is an allowable expenditure would be whether the assessee has laid out or expended the expenditure **wholly and exclusively** for the purpose of making or earning such income. In this connection the Hon'ble Gujarat High Court in **Smt. Virmati Ramkrishna Vs. CIT [1981] 131ITR 659 (Guj)** has laid down the relevant tests and basic propositions regarding expenditure claimed under the provisions of sec. 57 and this decision is relied upon. Since the assessee could not prove that expenses have been incurred wholly and exclusively to earn income from other sources therefore, the rigors of section 57(iii) are applicable and therefore interest expenses to the extent of Rs.6,55,980/- is disallowed. "

In his written submissions, the AR of the appellant submitted on this ground of appeal as under:

2. We respectfully submit that this issue is also covered in our favour in earlier assessment; years in our own case, since A.Y. 1966-67 to A.Y. 2012-13. We also enclose for your ready reference orders of Hon. ITAT in our own case for A.Ys. 1966-67 to 1969-70 and Hon CIT(A) in our own case for A.Ys. 1986-87, 1988-89 and a/so in A.Y. 2012-13 (pages 51 to 64), deciding the identical issue in our favour.

3. In light of the issue being fully covered in our favour; we request your Honour to grant deduction of Rs.6,55,980/- which is disallowed by the A.O."

The submissions are considered. Ground No.3 is against the disallowance of Rs.6,55,980/- being expenses against interest income. The A.O. held that 10% of total interest receipt as claimed by appellant as expenses is not allowable as per provision of section 57(iii) of the Act because the same is not incurred wholly and exclusively to earn such interest income. The A.O. rejected appellant's contention that Hon'ble ITAT in appellant's own case for A.Y. 66-67 to 69-70 and my predecessor i.e. CIT(A) in A.Y. 86-87, 88-89 and also in A.Y. 10-11 & 2011-12

*allowed such expenses. I have also followed the view taken by my predecessor in the appellant's appeal in A.Y.2012-13.*

*As on same issue with similar facts & contention such expenses were allowed by Hon'ble ITAT and by my predecessor and followed by me in A. Y. 2012-13, it is therefore respectfully following the ratio of such orders, A.O. is directed to allow such expenses and delete the addition so made of Rs.6,55,980/- accordingly this ground of appeal is **allowed.**"*

*As the Hon'ble ITAT in the appellant's own case has allowed 10% of the interest income u/s.57 of the Act respectfully following the orders of Hon'ble ITAT as above 10% of the same is allowed. Since, the impugned assessment order does not mention the percentile AO is directed to verify and allow 10% of the interest in terms of the order of Hon'ble ITAT referred hereinabove. Subject to this verification **Ground No.3 is allowed."***

5. Aggrieved by the order of the Ld.CIT(A), the Revenue has preferred an appeal before the Tribunal.

6. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that both the issues raised by the Revenue in ground Nos.1 & 2 of its appeal for AY 2014-15 are squarely covered in favour of assessee and against the Revenue by the orders of the Tribunal passed in assessee's own case for the several earlier years, wherein a consistent stand was taken by the Tribunal right from the beginning that the addition made by the Assessing Officer on account of Guests fees from member, Hire charges, Income from rooms and Housie participation fees cannot be sustained as the principle of mutuality is applicable in the assessee's case. Since the Ld.CIT(A) has followed the consistent view taken by the Tribunal in assessee's own case for the earlier years and the Ld.DR has not been able to point out anything to the contrary, we find no infirmity in the impugned order of the Ld.CIT(A) giving relief to

the assessee on this issue and upholding the same, ground No.1 of Revenue's appeal is dismissed.

7. As regards the issue involved in Ground No.2 of Revenue's appeal relating to the addition deleted by the Ld.CIT(A) on the addition made by the Assessing Officer on account of disallowance of assessee's claim of deduction u/s.57 (iii) of the Act, it is observed that this issue is also covered in favour of assessee by the consistent view taken by the Tribunal in assessee's own case for the several earlier years and since the Ld.CIT(A) has followed the view of the Tribunal, we find no justifiable reason to interfere with the order of the Ld.CIT(A), wherein he has given relief to the assessee on this issue. The same is upheld and ground No.2 of Revenue's appeal is dismissed.

8. Now we take up the Revenue's appeal for AY 2015-16 being ITA No.1917/Ahd/2019 in which the following grounds are raised:

1. *Whether the Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.2,10,73,529/- on account of Guest fees/Income from hire of rooms/Hire charges in respect of club properties/Housie participation fees on the ground that temporary members are not eligible to share surplus on dissolution of club.*
2. *Whether the Ld.CIT(A) has erred in law and on facts in deleting the disallowance of expenses of Rs.7,89,314/- u/s.57(iii) of the Income-tax Act, 1961.*

9. As the issues involved in ground Nos.1 & 2 raised by the Revenue for AY 2015-16 are similar to the issues raised in its appeal by way of ground Nos.1 & 2 for AY 2014-15 which have been decided by us in the foregoing



portion of this order, we follow our conclusion drawn in AY 2014-15 and dispose of ground Nos.1 & 2 of the Revenue's appeal for AY 2015-16.

10. As regards the Cross Objections filed by the Assessee for both the years under consideration being Nos.37/Ahd/2020 & 43/Ahd/2020, the Ld.counsel for the assessee submitted that the same are only supportive of the impugned orders of the Ld.CIT(A) giving relief to the assessee on the issues raised in ground Nos.1 & 2 of the Revenue's appeals. Since the appeals of the Revenue for AYs 2014-15 & 2015-16 on both these issues were already dismissed by us, the Cross Objections filed by the assessee have become infructuous and the same are liable to be dismissed as agreed by the Ld.counsel for the assessee.

11. In the result, both the appeals of the Revenue as well as Cross Objections of the Assessee are dismissed.

**Order pronounced in the Court on 21<sup>st</sup> February, 2022 at Ahmedabad.**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(PRAMOD M. JAGTAP)**  
**VICE-PRESIDENT**

Ahmedabad, Dated 21/02/2022

*टी.सी.नायर, व.नि.स।T.C. NAIR, Sr. PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-8, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad

1. Date of dictation (pad 13 pages attached with main file) : 21-2-2022
2. Date on which the typed draft is placed before the Dictating Member. : 21-2-2022
3. Date on which the approved draft comes to the Sr.P.S./P.S : :
4. Date on which the fair order is placed before the Dictating Member for pronouncement. : :
5. Date on which fair order placed before Other Member : :
6. Date on which the fair order comes back to the Sr.P.S./P.S. : :
7. Date on which the file goes to the Bench Clerk. : :
8. Date on which the file goes to the Head Clerk. : :
9. The date on which the file goes to the Assistant Registrar for signature on the order. : :
10. Date of Despatch of the Order : :