

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 3083/Ahd/2016

निर्धारण वर्ष/Assessment Year: 2008-09

Rajpath Club Ltd., S.G. Highway, Thaltej, Ahmedabad-380059 PAN : AAACR 7379 A	Vs.	ACIT, Circle-5, Ahmedabad
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ITA No. 3084/Ahd/2016

निर्धारण वर्ष/Assessment Year: 2012-13

Rajpath Club Ltd., S.G. Highway, Thaltej, Ahmedabad-380059 PAN : AAACR 7379 A	Vs.	DCIT Circle-3(1)(2) Ahmedabad
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ITA No. 274/Ahd/2017

निर्धारण वर्ष/Assessment Year: 2013-14

Rajpath Club Ltd., S.G. Highway, Thaltej, Ahmedabad-380059 PAN : AAACR 7379 A	Vs.	DCIT Circle-3(1)(2) Ahmedabad
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ITA No. 2420/Ahd/2018

निर्धारण वर्ष/Assessment Year: 2015-16

Rajpath Club Ltd., S.G. Highway, Thaltej, Ahmedabad-380059 PAN : AAACR 7379 A	Vs.	DCIT Circle-3(1)(2) Ahmedabad
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Biren Shah, AR
Revenue by :	Ms. Saumya Pandey Jain, Sr DR

सुनवाई की तारीख/Date of Hearing : 20.03.2024/26.06.2024
घोषणा की तारीख /Date of Pronouncement: 28.06.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

All these four appeals relating to the same assessee, pertaining to different assessment years as noted above, arise from the separate orders passed by the Id. Commissioner of Income-Tax (Appeals)-9, Ahmedabad [hereinafter referred to as "CIT(A)" for short] passed under Section 250(6) of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short].

2. It was common ground that the issue arising in all appeals was identical, relating to the application of principle of mutuality to income earned by the assessee-club from letting out certain facilities allegedly to its non-members/guests of Members. The application of principle of mutuality was denied by the Revenue on the said income and, hence the present appeal before us.

3. The facts relating to the case are that the assessee is a limited company engaged in the activity of providing club facilities to its members. In AY 2008-09, which is one of the impugned years before us, the assessee's claim of exemption to its income derived from letting out of AC Hall and lawns to non-members on the principle of mutuality, was denied by the Assessing Officer (AO) stating that the principle did not apply to these facilities of the club let out to non-members. The Id. CIT(A), however, allowed the assessee's appeal following the order of the ITAT in the case of the assessee in other years wherein it was allowed noting that the letting out was for guests of members and therefore for the benefit of members.. The matter travelled to the ITAT who noted a distinctive fact in the present case from the other years which were decided by the ITAT. It noted that the Assessing Officer, in the present case had found that the payment for the usage of AC Hall and the

lawns used by the non-members had been made by them and not by the members of the Club. The ITAT noted the findings of the Assessing Officer, therefore, that the facilities were utilized by the non-members and the assessee was only a conduit in the same by booking the facilities in its name. The ITAT accordingly restored back the issue to the file of the Assessing Officer to arrive at a clear finding whether payments were received from the members to extend the club facility to the guests of the members and directed the Assessing Officer to arrive at a decision after taking into consideration the decision of higher authorities and the order of the Tribunal cited by the assessee before it. The ITAT also noted the fact that in modern times the Clubs had evolved and progressed according to the modern day's requirements. Various types of membership were noted to be offered, like Permanent members, Short-Term Members, Corporate Members-by payment of hefty sum for tenure membership, non-resident Members, Garrison Members, Service Members etc. and each category of members were met out with different treatment with respect to right to vote in the General meeting and to participate in the management of the club, as also the terms for being a member. Noting this fact, the ITAT held that it was mandatory to examine from the root of the issue as to which category of members would fall within the ambit of the doctrine of mutuality. The ITAT noted that all the facts relating to the different type of members and the different treatment given to them needed to be recorded as a matter of fact.

3.1 In the second round before the Assessing Officer, the assessee submitted that the facility of usage of AC Hall and the lawns had been given only to the permanent members i.e. the Life Members, Ordinary Members and Institutional Members. That the other classes of members were not entitled to avail these services. The assessee also contended that all bills and vouchers

with regard to the usage of these facilities were issued in the name of members alone irrespective of whoever used the facility. The Assessing Officer noted that the assessee had not furnished details as required by the ITAT regarding as to who had made the payment for the usage of AC Hall and the lawns when let out to non-members. In the absence of any such details furnished by the assessee, the Assessing Officer reiterated his order denying the benefit of exemption to income earned from letting out all these facilities to non-members.

4. The matter was carried in appeal before the Id. CIT(A) who directed the assessee to furnish details in compliance with the directions of the ITAT. The assessee, in response, apparently submitted the forms which were filled out while letting out these facilities; and, on scrutinizing the said form alongwith ledger account of the member on a sample test basis the Id. CIT(A) noted that the payment for the usage of the facilities (AC Hall and the lawns) was invariably made by the non-members themselves. He, therefore, held that in the light of these facts, this income earned by the Club would not fall within the purview of principle of mutuality.

5. Before the Id. CIT(A), the assessee had raised an alternate contention that if the benefit of exemption is denied to this income, the gross income need not be subjected to tax, but only the net income, after deducting expenses relating to the earning of the said income, be subjected to tax. The assessee furnished a calculation of the same also to the Id. CIT(A) who sought a report from the Assessing Officer on the working. The Assessing Officer, though agreed that the assessee had adopted a logical basis for apportioning expenses to the said income, he, however, stated that the assessment order be reiterated and the gross income be subjected to tax. The Id. CIT(A), however, found

merit in the contention of the assessee and directed the Assessing Officer to work out the proportionate expenses and reduce it from the income earned from non-members and tax only the net income as a consequence. In A.Y 2008-09, therefore the assessee has come up in appeal against the order of the Ld.CIT(A) in second round challenging the treatment of income received by the assessee club from letting out of AC hall and Lawn as liable to tax being not covered by the principle of mutuality.

6. In the other years before us, i.e. AYs 2012-13, 2013-14 and 2015-16, the assessee has come up in appeal before us in the first round itself and the denial of exemption in all the said years is to the same income earned by the assessee-Club from letting out its AC Hall and the lawns to non-members.

7. Thus, the issue for consideration in all the appeals before us is whether the income derived by the assessee-club from letting out its AC Hall and the lawns to persons other than members of the club is liable to tax since it falls outside the purview of the principle of mutuality. The quantum so disallowed in the respective years before us is as under:-

Sr. No.	Assessment Year	Receipt for facilities usage by the guest of members
1.	2008-09	Rs. 39,58,802/-
2.	2012-13	Rs. 80,37,681/-
3.	2013-14	Rs.1,04,15,210/-
4.	2015-16	Rs. 60,38,990/-

8. The assessee has challenged the order of the ld. CIT(A) confirming the addition made by the Assessing Officer of the receipts from non-members as noted above and, for the sake of convenience, we are reproducing the ground raised by the assessee in its appeal in AY 2008-09 as under:-

"1. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in upholding the addition of Rs. 39,56,802 made to

the appellant's returned income by the learned Assessing Officer on the ground that that income was outside the purview of the principle of mutuality. He ought to have appreciated, inter alia, that the appellant's case was covered by the decisions of the Supreme Court in CIT v. Bankipur Club Ltd. (226 ITR 97) and Chelmsford Club v. CIT (243 ITR 89) and accordingly, the impugned amount was not assessable in the hands of the appellant.

2. Without prejudice to the foregoing Ground No. 1, in law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred, even while appreciating the merits of the appellant's case put up vide Ground No. 3 of its appeal before him, that if the income of Rs. 39,56,802 in question was assessable in the hands of the appellant, the appellant deserved to be granted deduction for proportionate expenses as expenses incurred for earning such income, in confining such deduction only to specific items viz., electricity, staff salary and repairs and maintenance and thereby restricting the quantum of deduction on that account to Rs. 19,87,178 as against Rs.37,31,188 claimed by the appellant on the basis of elaborate details furnished before him in that regard.

9. Before proceeding, we may note that the assessee has also raised another ground in all the appeals with respect to the alternate contention raised by it before the Id. CIT(A) of taxing only the net receipts and not the gross amount received from alleged non-members. In the submissions filed before us in writing dated 08.12.2021, the assessee has conceded that the Id. CIT(A) has rightly restored the issue back to the Assessing Officer for reworking the net amount of income to be taxed, thus, in principle, accepting the assessee's contention of taxing only the net income and not the gross income, and accordingly it was not aggrieved by the order of the Id. CIT(A) on this aspect. Therefore, the ground raised by the assessee on this aspect needs to be dismissed as not arising on account of any grievance of the assessee from the order of the Ld. CIT(A).

10. The only effective issue for adjudication before us, therefore, is with regard to the income received by the assessee-club from the letting out of its facility of AC Hall and lawns to the alleged non-members.

11. Similar disallowance, we have noted, was made in the case of the assessee in AYs 2010-11, AY 2009-10, AY 2006-07, AY 2007-08, AY 2005-06, AY 2004-05 and AY 2003-04, but was consistently allowed by the Tribunal noting that the AC Hall and lawns was given to relatives and guests of the members and the doctrine of mutuality extended even when the facilities were provided to the guests of the members on account of member himself. It was noted that in such circumstances, it could not be said that the **facilities were provided to non-members.**

12. **The differentiating fact in the present appeal before us pertaining to AY 2008-09, AY 2012-13, AY 2013-14 and AY 2015-16 is that it was found that the payment for the usage of these facilities was not made by the member but was made by the non-members or alleged guests of the members.** The Id. CIT(A), in his order passed for AY 2008-09, had derived this fact from the documents filed by the assessee before him. He noted that the assessee did not directly furnish such information as to who had made the payment for the usage of the facilities by non-members / guests of the members. The Id. CIT(A) went through the details mentioned in the application form of the Club for utilizing these facilities from where he noted the details regarding the payment made for the usage of the facilities, particularly the cheque number and name of the bank account from where the payment was made. He went through the ledgers of the members in whose name the facility had been given to the guests/non-member and noted therefrom that while the payment for the usage of the facilities of the club by the member himself was made either by cash or by way of cheque, the payment by way of cheque flowed from a different bank account as opposed to that which found mention in the ledger account of the member in relation to payment made for the usage of facility by non-members. It is on this basis, the Id. CIT(A) arrived at a

finding that the payment for the usage of AC Hall and lawns to non-members was made by the non-member/guests himself. Before us, the Id. Counsel for the assessee has not furnished any evidence to show that this finding of the Id. CIT(A) was incorrect.

13. His only pleading before us is a reiteration of what he stated to the lower authorities also, that the booking for the usage of such facilities by non-members is made in the name of the members on their recommendation and the liability for the payment is ultimately with that of the member alone which is evident from the fact that it is the members' account that the liability for the payment is accounted for. That the fact of who actually made the payment is immaterial for the purpose.

14. Therefore, the facts which are derived in relation to the issue before us, which is the applicability of the principle of mutuality to income derived from letting out of AC Hall and lawns to non-members, is :-

- (i) The booking is done in the name of member clearly mentioning the fact of the usage of facility by an outsider/ non-member;
- (ii) The liability for payment for the usage of the facility is raised in the account of the member;
- (iii) **The facility is utilized by non-member/guests, and payment also is made by the guests/non-members.**

15. Having noted the facts as above, the adjudication of the issue of the applicability of principle of mutuality to these incomes becomes very simple. It is a settled proposition of law recognized as a fundamental principle for applicability of the doctrine of mutuality that there has to be a complete identity between the contributors and the participators of the funds. In the

landmark judgment in the case of M/s. Bangalore Club Vs. CIT & Anr, reported in (2013) 350 ITR 509 (SC), the Hon'ble Apex Court held that the first condition required for applying the principle of mutuality is that there must be a complete identity between the contributors and the participators. The Hon'ble Apex Court noted that this was first laid down by Lord Macmillan in Municipal Mutual Insurance Ltd. Vs. Hills, wherein it was observed that "*the cardinal requirement is that all the contributors to the common fund must be entitled to participate in the surplus and that all the participators in the surplus must be contributors to the common fund; in other words, there must be complete identity between the contributors and the participators.*"

16. In the facts of the present case, this fundamental principle fails on the income derived from letting out of AC Hall and Lawn facilities to non-members/ guests. The fact that the non-members paid for the usage of these facilities is a clear pointer to the fact that the facility was given to the non-members not on behalf of the members as their guests but for the benefit of the non-member alone. Clearly the member was only a name lender, a conduit, as rightly noted by the authorities below. His role ended with the lending of his name, the facility was thereafter utilized by non-member on making payment. The mere fact that the club held the member liable for making the payment, does not take away the fact noted by the Ld.CIT(A) that in every such letting out to non-members, the payment invariably was made by the non-member. Therefore, even though the liability may be in the name of members, but the discrete understanding is that the payment is to be made by the non-member himself. There is no iota of doubt, therefore, that the letting out of these facilities to non-members was not for the contributors in the common fund of the assessee club. While the club had been formed with

the members being the contributors and the participators to the benefits of the club, these particular facilities (AC Hall and Lawn) let out to non-members on payment made by them was for the benefit of non-members alone.

17. In other years, before the Tribunal, it was noted that the facilities had been extended to the non-members on the behest of the members as his guests and the fact that the payment is also being made by non-members was not brought to the knowledge of the ITAT; and, therefore, it proceeded with the belief that the extension of the facility to non-members was for and on behalf of the members itself.

18. In the facts of the present case the facility is not being given to the non-members for and on behalf of the member, but it is being exclusively given to the non-member alone. We have no hesitation therefore in holding that the usage of AC hall and lawns facility by non-members in the facts of the present case before us is not covered by the principle of mutuality. In the light of the same, the order of the Id. CIT(A) is confirmed and the ground raised by the assessee in this regard is dismissed.

19. In effect, all the appeals filed by the assessee are dismissed.

Order pronounced in the open Court on 28/06/2024 at Ahmedabad.

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated 28/06/2024

*BT**

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

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)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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