आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन , न्यायिक सदस्य एवं श्री ए. मोहन अलंकामणी ,
लेखा सदस्य , के समक्ष ।

BEFORE SHRI N.R.S.GANESAN, JUDICIAL MEMBER AND
SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.1529/Mds./2013**
(निर्धारण वर्ष / Assessment Year :2010-11)

M/s.Ootacamund Club, Club Road, P.O. Box No.19, Ootacamund 643 001. **PAN** AAACO 6965 F (**अपीलार्थी /Appellant**)	**Vs.**	Income Tax Officer, Ward I(1), Ootacamund. (**प्रत्यर्थी/Respondent**)

अपीलार्थी की ओर से / Appellant by : Mr.Jehangir D.Mistry, Sr.Counsel
प्रत्यर्थी की ओर से/Respondent by : Mr.P.Radhakrishnan,JCIT, D.R

सुनवाई की तारीख/ Date of hearing : 24.06.2015
घोषणा की तारीख /Date of Pronouncement : 05.08.2015

आदेश / O R D E R

PER A.MOHAN ALANKAMONY , ACCOUNTANT MEMBER:

This appeal is filed by the Assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-I, Coimbatore dated

15.05.2013 in ITA No.119/12-13 passed under Sec.143(3) read with section Sec. 250 of the Act.

2. The Assessee has raised five elaborate grounds in its appeal, however the crux of the issue is that the Assessee is aggrieved by the order of the Ld. CIT (A), who had upheld the order of the Ld. Assessing Officer, by holding that the interest received from the bank and financial institutions amounting to ₹9,97,960/- on account of fixed deposits shall fall outside the purview of the "*principles of mutuality*" and accordingly the said sum shall be liable to be treated as taxable income of the assessee.

3. The brief facts of the case are that the assessee 'Ootacamund Club' registered under Section-25 of the Companies Act, filed its return of income for the assessment year 2010-11 on 09.10.2010 admitting 'Nil' income. Subsequently, the case was selected for scrutiny and order U/s.143(3) was passed on 29.01.2013 wherein the Ld. Assessing Officer brought to tax an amount of ₹9,97,960/- being

interest received by the assessee company on account of fixed deposit held by it in banks & financial institutions.

4. While arriving at such conclusion, the Ld. Assessing Officer observed as follows:-

i) The fact that an assessee company satisfies the norms of mutuality in respect of receipts by contributions from its members does not necessarily lead to the conclusion that every activity of the assessee satisfies the test of the mutuality.

ii) An assessee may engage in certain activities which can be described as mutual and also in other activities which are not mutual.

iii) The interest received from banks and financial institutions by the assessee company on account of fixed deposits are investments made with third parties and not with the members of the assessee company.

iv) The decision to invest funds in banks and financial institutions is a prudent commercial decision motivated by the desire to earn

interest and that would not fulfill the requirement of the mutuality.

v) While investing the funds with banks and financial institutions the assessee company assumed the character of a customer of the financial institutions and the relationship between them is that of a banker and its clients.

vi) The principles of mutuality will be applicable only when the income earned has a direct nexus with members.

vii) The interest income received from such deposits are not receipts in the form of contributions from the members of the assessee company.

ix) The banks and financial institutions are not the members of the assessee company; consequently the concept of mutuality does not arise.

5. The Ld. Assessing Officer also relied on the decision of the Hon'ble Apex Court in the case of M/s.Bangalore Club Vs. CIT in civil Appeal No.124-125/2007 with Civil Appeal No.272-278 of 2013 wherein the Hon'ble apex Court while answering the question

"Whether or not the interest earned by the assessee on the surplus funds invested in fixed deposits with corporate member banks is exempt from levy of income tax, based on the principles of mutuality?" It was held that:-

"*The set-up resembled that of a mutuality till the stage of generation of surplus fund, however, as soon as these funds were placed in fixed deposits with banks, the closed flow of funds between the banks and the club suffered from deflections due to exposure to commercial banking operations and the member banks used such deposits to advance loans to their clients. Hence, with the funds of the mutuality member banks engaged in commercial operations with third parties outside of the mutuality, rupturing the 'privity of mutuality', and consequently, violating the one to one identity between the contributors and participators as mandated – the funds do return to the club, but before that, they are expended on non-members i.e. the clients of the bank and this loaning out of funds of the club by banks to outsiders for commercial reasons, snaps the link of mutuality- the amount of interest earned by the assessee from the four banks will not fall within the ambit of the mutuality principle and will therefore, be eligible to income tax in the hands of the assessee club.*

6. On appeal, the Ld. CIT (A) confirmed the order of the Ld. Assessing Officer. The relevant portion of the order is reproduced herein below:-

"4. The main issue in the grounds of appeal is regarding the action of the Assessing Officer in taxing of the interest income from deposits and

investments made by the appellant. The appellant submitted that the interest income from deposits and investments are governed by the principle of mutuality and as such are not taxable income on the institute. The Ld. A.R. also argued that it is not the surplus fund of the Club that was deposited in the banks to earn interest but only the entrance fee received from members which was directly taken to the corpus fund, which are being deposited from which the income has been earned.

5. I have gone through the submissions made by the appellant and also the order of the Assessing Officer. In the recent judgment, the Hon'ble Apex Court in its decision (January 14, 2013) in the case of Bangalore Club Vs. CIT 29 Taxmann .com 29 held that there was a lack of identity between contributors and participators to fund and thus interest income was taxable has business income. The apex Court observed that till the stage of generation of surplus fund, the set up resemble that of mutuality. The flow of money to and from was maintained within the close circuit formed by the banks and the club and to that extent nobody who was not privy to this mutuality benefitted from the arrangement. However, as soon as these funds were placed in fixed deposit with banks, the closed flow of funds between the banks and the club suffer from deflections due to exposure to commercial banking operations. During the course of their banking business, the banks used their deposits to advance loans to their clients. Hence, in the instant case with the funds of the mutuality, banks were engaged in commercial operations with third parties outside of the mutuality, rupturing the privity of mutuality and consequently violating the one to gone identity between the contributors and participators as maintained by the first condition. Hence, the claim of mutuality is not satisfied. Further, the Hon'ble Apex Court observed that to claim an exemption from tax on the principle of mutuality, treatment of the excess funds must be in furtherance of the objects of the club which is not the case

here. In the instant case, the surplus funds were not used for any specific service, infrastructure and maintenance or for any other direct benefit for the member of the club. These were taken out mutuality that the banks placed the funds at the disposal of their parties thus initiating an independent contract between the bank and the clients of the bank, a third party not privy to the mutuality.

6. The facts of the appellant's case clearly fall in the ambit of the decision of the Hon'ble Supreme Court. The facts at hand also fail to satisfy the third condition of mutuality principle i.e. impossibility. The contributor should derive profits from contributions made by themselves to a fund which could only be expended or returned to themselves. In the instant case, the funds did return to the club. However, before that they are expended on non-members i.e. the clients of the bank. The bank generate revenue by paying the lower rate of interest to the assessee club, that makes deposits with them, and then loan out the deposited amounts at a higher rate of interest to third parties. These loaning out of funds of the club by the banks to outsiders for commercial reasons, is not the link of mutuality. The decision of the Hon'ble Apex Court is clearly applicable to the facts of the appellant club. Respectfully following the decision of the Apex Court in the case of Bangalore Club Vs. CIT 29 Taxmann.com 29, I confirm the action of the Assessing Officer in bringing the interest on bank deposits for taxation."

7. The Ld. A.R. relied in the decision of Chennai bench of the Tribunal in assessee's own case in ITA Nos.505 to 510/Mds./2009 for A.Ys 2002-03 to 2007-08, order dated 7th August, 2009. He argued stating that the order of the Tribunal had reached finality since the Revenue did not carry the matter any further. It was also argued that

in the case of Bangalore Club relied upon by the Revenue the issue was with respect to the interest earned from the financial institutions who are members of the assessee Club and in the case of the assessee the issue was with respect to interest earned from the financial institutions who are not the members of the assessee Company. Hence facts were not identical and therefore the decision of the Honorable Apex Court in the case of Bangalore Club will not be applicable to the case of the assessee company and the decision of the Tribunal in the assessee's own case of the earlier years would be applicable which is on the identical issue and in favour of the assessee. The Ld. A.R. further submitted that in the case of the assessee company the principles of mutuality would apply because the idle funds of the assessee company are only kept in fixed deposits in banks which are meant to be utilized for the purpose of the assessee company and not for the purpose of distributing dividend. The Ld. D.R on the other hand relied in the decision of the Hon'ble Apex Court in the case of Bangalore Club cited supra and the decision of the Ld. Assessing Officer and the Ld. CIT (A) and argued in support of the same.

8. We have heard both the parties and carefully perused the materials available on record. We do not find any merits in the arguments submitted by the Ld. A.R. The decision of the Tribunal in the assessee's own case (supra), the Bench had followed the decision of the Hon'ble Apex Court in the case of CIT Vs. Vegetable Products Limited in (1973) 88 ITR 192 (SC) wherein it was held that when two views are possible on the same issue by the two different High Courts, then the view in favour of the assessee has to be upheld. However, in the present situation the Hon'ble apex Court in the case of Bangalore Club (supra) has categorically held that the interest earned by the assessee from the financial institutions who are members of the assessee Club will not fall within the ambit of mutuality principle and therefore will be exigible to income tax in the hands of the assessee club. The gist of the order is reproduced herein below for reference:-

(a) Firstly, the arrangement lacked complete identity between the contributors and participators. Till the stage of generation of surplus funds, the flow of money, to and fro, was maintained within the closed circuit formed by the banks and the club, and

to that extent, nobody who was not privy to this mutuality, benefited from the arrangement. However, as soon as these funds were placed in fixed deposits with banks, the closed flow of funds between the banks and the club suffered from deflections due to exposure to commercial banking operations. During the course of their banking business, the member banks used such deposits to advance loans to their clients. Hence, with the funds of the mutuality, member banks engaged in commercial operations with third parties outside of the mutuality, rupturing the privity of mutuality, and consequently, violating the one to one identity between the contributors and the participators as mandated by the first condition.

(b) The surplus funds were not used for any specific service, infrastructure, and maintenance or for any other direct benefit for the members of the club. When the member banks placed them at the disposal of third parties, an independent contract between the bank and the clients of the bank, a third party, not privy to the mutuality, was initiated. This contract was not an activity of the club in pursuit of its objectives.

(c) The principle of impossibility that contributors should derive profits from contributions made by themselves to a fund which could only be expended or returned to themselves requires that the funds must be returned to the contributors as well as expended solely on the contributors. Although in the assessee's case the funds did return to the club, before that, they were

expended on non-members, i.e., the clients of the bank. The loaning by the banks out of funds of the club to outsiders for commercial reasons snapped the link of mutuality. The club did not give, or get, the treatment a club gets from its members ; the interaction between them clearly reflected one between a bank and its client. The interest accrued on the surplus deposited by the club like in the case of any other deposit made by an account holder with the bank.

(d) The assessee was already availing of the benefit of the doctrine of mutuality in respect of the surplus amount received as contributions or price for some of the facilities availed of by its members, before it was deposited with the bank. The assessee could not be permitted to claim double benefit of mutuality.

In the case before us the situation is much worse than the case of Bangalore Club, because the financial institutions from whom the interest is received by the assessee are not members of the Assessee Company but third parties. The relation between them is only as clients of the financial institutions and there is no scope of mutuality existing between them. Further it an income earned by the assessee company from its resources out of the transactions with third parties which are available for the members of the assessee

company for their collective enjoyment though not available for distribution as dividend. For these reasons in the case of the Bangalore Club, the assessee itself had admitted, that the interest received from the financial institutions who are not members of the assessee Club, as its income. Therefore, respectfully following the elaborate order of the Hon'ble Apex Court, we hereby confirm the orders of the Revenue. We further make it clear that since in our opinion the issue in this case before us is squarely covered by the decision of the Honorable Apex Court in the case Bangalore Club supra and the decisions cited by the Ld.A.R are not directly on the subject, those decisions are not discussed in this order.

9. In the result, the appeal of assessee is dismissed.

Order pronounced on 5th august, 2015 at Chennai.

Sd/-	Sd/-
(एन.आर.एस. गणेशन)	**(ए. मोहन अलंकामणी)**
(N.R.S.GANESAN)	**(A.MOHAN ALANKAMONY)**
Judicial Member	Accountant Member

Chennai,
Dated the 5th August, 2015.
K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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