

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 84/2003

Decided on : May 11, 2007

THE COUNTRY CLUB Appellant
Through Mr. Ajay Vohra with Ms. Kavita Jha,
Advocates

versus

THE DIRECTOR OF INCOME TAX Respondent
Through Mr. R.D. Jolly with Mr. Vishnu
Sharma, Advocates

Coram:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

MADAN B. LOKUR, J.(Oral)

After hearing learned counsel for the parties we admit this appeal and
frame the following substantial question of law:-

“Whether on the facts and in the circumstances of the case, the Income Tax
Appellate Tribunal erred in law in holding that the amount received by way of
interest from banks on temporary deposit of the funds is not exempted from tax
on the “principle of mutuality”?”

2. Since a short question of law is involved, filing of paper books is
dispensed with.

3. The Assessee is aggrieved by an order dated 7th March, 2002 passed by
the Income Tax Appellate Tribunal, Delhi Bench 'A' in ITA Nos.7486
and7487/Del/1995 relevant for the assessment years 1991-92 and 1992-93.

4. The Assessee club earns income from its members and their guests.
Surplus funds are deposited in banks and these surplus funds are attributable
to amounts received from members of the Assessee club towards their dues and

for expenses incurred by members and their guests in restaurants and other facilities of the club like billiard room, tennis and squash courts and swimming pool, etc. There is no dispute about the fact that all these facilities are available only to members of the Assessee club and their guests.

5. Applying the doctrine of mutuality, the Tribunal held that income received by the Assessee for the use of facilities by guests of the members is exempt from taxation. This being the position, we are of the view that deposits made as a result of this income received and the interest received thereon from the banks cannot be said to be outside the doctrine of mutuality.

6. Learned counsel for the Assessee has relied upon Director of Income Tax v. All India Oriental Bank of Commerce Welfare Society, [2003] 130 TAXMAN 575 (Delhi), in which this Court has relied upon in Chelmsford Club v. CIT [2000] 243 ITR 89(SC). It was held, following the decision of the Supreme Court, that where a number of persons combine to contribute to a common fund and have no dealings or relations with any other body, then any surplus generated cannot, in any sense be regarded as profits chargeable of tax. On this basis, the doctrine of mutuality was applied to the facts of that case. We see no distinction in the decision rendered by this Court in All India Oriental Bank of Commerce Welfare Society and the present case.

7. Under the circumstances, we answer the question of law in the affirmative, in favour of the Assessee and against the Revenue.

8. The appeal is disposed of.

MADAN B. LOKUR, J

V. B. GUPTA, J

MAY 11, 2007