आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.: 501, 502 & 503/CHNY/2018**

निर्धारण वर्ष /Assessment Years: 2012-13, 2013-14 & 2014-15

M/s. Madras Race Club, Post Box No.2639, Guindy, Chennai – 600 032.	vs.	**The DCIT,** Corporate Circle – 4(1), Chennai – 34.
PAN: AAACM7640R (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Baskar & Shri I. Dinesh, Advocates

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 07.07.2022

घोषणा की तारीख/Date of Pronouncement : 13.07.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These three appeals by the assessee are arising out of the common order passed by the Commissioner of Income Tax (Appeals)-8, Chennai in ITA No.66/15-16, 204 & 302/16-17, order dated 08.12.2017. The assessments were framed by the DCIT, Corporate Circle-4(1), Chennai for the assessment years 2012-13, 2013-14 & 2014-15 u/s.143(3) of the Income Tax Act, 1961

(hereinafter the 'Act') vide orders dated Nil, 31.03.2016 & 28.12.2016 respectively.

2. The first common issue in these three appeals of assessee is as regards to the order of CIT(A) confirming the action of AO in making disallowance of horse transportation charges of Rs.30,00,000/- in AY 2012-13, Rs.90,35,500/- in AY 2013-14 and Rs.52,14,340/- in AY 2014-15. The facts and circumstances in all the three appeals are identical. The ld.counsel for the assessee as well as the ld. Senior DR admitted that the facts and circumstances are identical and the issue is exactly identical, hence, we are taking up ITA No.501/Chny/2018 for AY 2012-13 and will decide the issue. The relevant ground raised which are identical in all the three appeals and ground raised in AY 2012-13 read as under:-

> 1.1 The CIT(A) erred in confirming the disallowance of horse transportation charges of Rs.30,00,000/-
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> 1.2 The CIT(A) erred in not considering that the charges were in effect reimbursement of expenses paid by the horse owners for the transportation and the subsidy for each horse which is an allowable business expenditure.
>
> 1.3 The CIT(A) erred in categorizing race horses as livestock and including them within the definition of "Goods" u/s.194C of the Act.

3. Brief facts are that the assessee company Madras Race Club is engaged in conducting horse racing and club activities. The AO

during the course of assessment proceedings noted the horse transportation expenses claimed by assessee to the sum of Rs.30,00,000/- i.e., Rs.15,00,000/- on 01.04.2011 and another Rs.15,00,000/- on 30.04.2011 in two tranches of Rs.7.5 lakhs each. The AO noted that the assessee passed these entries through journal, as per which the first Rs.15 lakhs is for Dr.M.A.M. Ramaswamy Horse transportation charges for Ooty races and next Rs.15 lakhs is for South India Corporation Horse transportation charges. The assessee was required by the AO to produce the details along with documentary evidences with regard to these horse transportation charges. The assessee produced ledger copy of horse transportation charges but failed to produce basic documentary evidence to prove and explain the exact purpose for which this expenditure was incurred. The AO noted that the assessee recorded the fact of expenditure to be incurred in assessee's booklet but that itself, according to AO, cannot be treated as evidence to prove the expenditure. Therefore, the AO disallowed the horse transportation charges claimed by assessee as the assessee failed to prove the genuineness and the purpose of this expenditure is for the business. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) considered the submissions of assessee, the assessee produced journal entry as well as journal vouchers which is annexed as AJ-3 and narration in journal entry, the assessee claimed that this amount was made by cheque i.e., aggregate value of Rs.15,00,000/- vide two cheques bearing Nos.051479 on 6.4.2011 & 051480 dt. 9.4.2011 each for Rs.7,50,000/- drawn on Indian Bank, Adyar, Chennai in favour of M/s. South India Corporation Ltd towards horse flat charges for transporting horses to Ootacamund. The assessee explained that these horse transportation charges is actually incurred for the business of the assessee i.e., conducting horse racing and club activities as it has to transport horses from various places to Ooty for conducting the races on race days. The assessee explained that horse transportation charges are transport subsidy given to horse owners in respect of each horse owned by them which participated in races, where the horse has to be transported from Chennai to Ooty or from Ooty to Chennai. It was explained that the entire transportation charges are paid by the horse owners but small portion as mentioned in the prospectus of the club to promote horse racing activity is paid as subsidy of each horse. In effect, these reimbursements of expenses are spent back on behalf of horse owners to the transportation company. In view of the above,

ld.counsel before CIT(A) claimed that the expenses are paid to the real horse owners as subsidy and for the genuine business purpose of the assessee and also payment made by cheque, which is proved by filing documentary evidences like journal entry giving cheque Nos. etc., The CIT(A) was convinced with the explanation of the assessee as far as genuineness of transactions as well as the nature of business expenses incurred and according to him, the charges is for business but he has not recorded this fact. But, for confirming the action of the AO, the CIT(A) changed the stand and according to him, since transportation of horses which is included in the activities covered in the section 194C of the Act and assessee is obliged to deduct TDS, which is pre-requisite for claim of expenses. Accordingly, by invoking the provisions of section 40(a)(ia) of the Act, he upheld the disallowance. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, the ld.counsel for the assessee apart from the above arguments as made before CIT(A) argued that entire racing activity has been offered to tax and the transport subsidy given to horse owners to promote horse racing activity is allowable as business expenditure and these amount has been paid to South Indian Corporation Agencies, a company which is assessed to tax in

Chennai and all the payments effected by assessee be reflected in the returns of income of the recipient. The ld.counsel for the assessee stated that even otherwise the issue is fully covered by the decision of Co-ordinate Bench of this Tribunal, Bangalore Bench in the case of Mysore Race Club Limited in ITA 1232/Bang/2018, order dated 21.04.2022, wherein the Tribunal considered the same transport subsidy and held that these payments are not liable for TDS. The ld.counsel for the assessee drew our attention to para 9.2 of the Tribunal decision in Mysore Race Club Limited, *supra,* which reads as under:-

> 9.2 A perusal of the explanation furnished by the assessee would show that
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> (a) the assessee is absorbing part of cost of fodder purchased for feeding horses. The payment made for purchase of fodder does not attract any of the TDS provisions. In this case, the assessee is charging the cost of fodder at lower rate. Thus, this does not amount to payment to anyone, which would attract TDS provisions under any of the sections.
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> (b) in respect of transport subsidy also, we notice that the assessee has met part of transportation expenses incurred by the horse owners in the form of reimbursement made to them. The primary liability to deduct TDS would lie upon the horse owners, since they have incurred the cost of transportation. The assessee has only reimbursed part of transportation cost to the horse owners. Accordingly, in our view, this payment will also not liable for deduction of tax at source.
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> (c) the two-year old subsidy is also a kind of reimbursement to groom horses and the same, in our view, would also not attract provisions of TDS.
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> (d) payment to jockeys and trainers fund and employees welfare society is a kind of contribution connected with the business activities of the assessee and the said payments are also not covered by any of the TDS provisions.

(e) the last item "Syces subsidy" is the money paid to the owners of horses from out of stake money and it would also be not covered by any of the TDS provisions.

Accordingly, we are of the view that the disallowance made by A.O. u/s 40(a)(ia) of the Act in respect of subsidy expenditure is not in accordance with law and the Ld. CIT(A) was not justified in confirming the said addition. Accordingly, we set aside the order passed by the Ld. CIT(A) on this issue and direct the A.O. to delete the disallowance.

6. On the other hand, the ld.Senior DR Shri AR. V. Sreenivasan relied on the assessment order and the order of CIT(A). He only made request that matter can be referred back to the file of the AO to examine whether the recipient have disclosed the income in their respective returns or not.

7. We have heard rival contentions and gone through facts and circumstance of the case. We noted that the CIT(A) has not doubted the genuineness of the business expenditure and that these expenses are for the purpose of business and that has become final. Even, Revenue has not challenged the same. Now, only dispute remains is whether this transport subsidy or horse transportation charges are liable to TDS u/s.194C or not. We noted that these payments in the name of horse transportation charges or transport subsidy provided to horse owners by the assessee is nothing but reimbursement on account of fodder charges, food of horse or to

meet part of the transportation expenses. Once, this is the fact that these are reimbursement of expenses, the assessee is not liable to TDS u/s.194C of the Act. Further, this issue is covered by the decision of Bangalore Bench of ITAT in the case of Mysore Race Club Limited, *supra.* Respectfully following the same, we delete the disallowance and allow this ground of assessee's appeal.

8. Since facts are similar in other two assessment years, taking a consistent view, we allow this ground in all the three appeals of the assessee.

9. The next common issue in these three appeals of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of entrance fee paid by non-voting members amounting to Rs.2,81,50,000/- in AY 2012-13, Rs.2,10,00,000/- in AY 2013-14 and Rs.1,33,50,000/- in AY 2014-15. The ld.counsel for the assessee as well as the ld. Senior DR admitted that the facts and circumstances are identical and the issue is exactly identical in all three assessment years, hence, we are taking up ITA No.501/Chny/2018 for AY 2012-13 and will decide the issue. The relevant ground raised which are identical in all the three appeals and ground raised in AY 2012-13 read as under:-

2.1 The CIT(A) erred in confirming the addition of entrance fee paid by the non-voting members to the Appellant to the tune of Rs.2,81,50,000/-.

2.2 The CIT(A) erred in applying the decision of the Hon'ble Supreme Court in the case of M/s.Citizen Co-operative Society [397 ITR 1] to the present case when it is clearly distinguishable on facts and law.

2.3 The CIT(A) erred in not following a plethora of judgments cited by the Appellant holding that the entrance fee paid by the members were not taxable based on the principles of mutuality.

10. Brief facts relating to the above issue are that the AO during the course of assessment proceedings noted that the assessee club has got various categories of members like club members, stand members and non-voting members, etc. The club members and stand members on being inducted into the membership of the club are required to pay an entry fee. The AO noted that as per books of accounts of the assessee, the entrance fee from non-voting members is also directly taken into capital account i.e., general funds without passing the income through incomes and expenditure account. Therefore, he noted that this entry fee of Rs.2,81,50,000/- being entry fee collected from stand members or non-voting members of the club is taxable because it does not fall within the ambit of mutuality. For this, AO recorded his findings

During the relevant year the assessee company has collected a, sum of Rs.2,81,50,000/- towards entry fee from stand members. It was explained by the assessee that the said receipt is capital in nature and the same is not taxable as the assessee's case is squarely covered by Delhi High Court Judgment in the case of CIT Vs Delhi Race club (1940) Ltd. [1970] 75 ITR

> 111 (Delhi). It can be noticed from the said judgment that the issue under examination was as to how the the subscriptions from the members who has got right to vote and participate in the management of the affairs of the club. Whereas in the case of the assessee it is the entry fee that is collected from the stand members who do not have a right to vote. In view of this the judgment of the case referred to be the assessee is not applicable to the case of the assessee, as the basic fact is different in both the cases. As the stand members do not have a right to vote or to participate in the management of the company, the entry fee collected can not be said to fall under the bracket of mutuality. It also can not be said to be capital receipt in view of the judgment in the case of Presidency club (Supra), the judgment of the Chennai bench of The ITAT. Therefore, the entry fee of Rs.2,81,50,000 collected from the stand members being revenue in nature and as the same do not fall under the ambit of mutuality, the said sum is added to income of the assessee.

Aggrieved, assessee preferred appeal before CIT(A).

11. The CIT(A) after going through the decision of Hon'ble Supreme Court in the case of The Citizen Co-operative Society, 397 ITR 1, stated that the assessee cannot claim mutuality in respect of receipts or subscription fee or entrance fee received from stand members or non-voting members. The CIT(A) finally held in para 13 & 14 as under:-

> 3. As above, the Hon'ble Supreme Court has clearly ruled against giving the privilege of principle of mutuality to incomes derived from services rendered to non voting members. In this regard, it is seen that the assessee is not eligible to claim the benefit of mutuality in not offering the subscription fees / entrance fees received from stand members and others.
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> 14. In the case of M/s. The Presidency Club, Chennai in ITA No:237/Mds/2011, the Hon'ble Tribunal has held that the principle of mutuality will apply with respect to revenue generated from services

> rendered to voting members and that the non-voting members are not part of that mutuality. In ordering so, the Honble Tribunal has held "needless to say that the fee paid by non-voting members by whatever name called will be in the nature of revenue receipts". The Hon'ble Supreme Court has reiterated this stand in its judgment in M/s. The Citizen Co-operative Society (supra). In view of the above, it is held that the earlier decision in the case of M/s.Delhi Race Club (75 ITR 111) (Delhi) and the decisions of the Hon'ble Supreme Court in the cases of M/s.Chelmsford Club (243 ITR 89) and M/s.Bankipur Club (227 ITR 97) stand overruled and suitably modified by the latest decision of the Hon'ble Supreme Court in the case of M/s. The Citizen Co-operative Society (397 ITR 1). In view of the above, it is held that the assessee cannot claim the privilege of mutuality and that the revenue generated from services rendered to non-voting members under the designations of stand members and other members are liable for taxation. The assessee cannot claim any privileges for being a section 25 company as no such special privileges are given under the Act. In view of the same, the action of the Assessing Officer in bringing Rs.2,81,50,000/- AY 2012-13, Rs.2,10,00,000/- for AY 2013-14 & Rs.1,33,50,000/- for AY 2014-15 for taxation is upheld. The grounds of appeal on this issue are rejected.

Aggrieved, assessee came in appeal before the Tribunal.

12. Before us, the ld.counsel for the assessee argued that the different forms of members are club members, stand members and temporary members. He explained that the club and stand members are permanent members with different type of rights and temporary members are admitted as members for a short period. He argued that where member is called the club member, stand member, temporary member or non-voting member, etc., all are recognized as members and non-voting members contribute entrance fee. During the year, the entire entrance fee collected is

from stand members only amounting to Rs.2,81,50,000/- He stated that as per Article of Association and Bye-laws of the club, there is no difference in usage of the club in any of the categories of members except non-voting members or stand members, by whatever name you call, they have no voting right in management. Secondly, non-voting right members cannot assess club on racing days because on racing day, the club has a policy to give subsidized foods and due to heavy rush on race days, non-voting members are not allowed except these restrictions, there is no restriction for non-voting members or stand members for usage of the club. According to him, as these members have every right to use the club except the above two conditions, entrance fee collected from these non-voting members come within the purview of mutuality. Therefore, the assessee has rightly accounted for the same as capital receipt directly taken into balance sheet and it is not routed through income and expenditure account. The ld.counsel for the assessee also stated that in similar circumstances, the Chennai Bench of the Tribunal in the case of Madras Cricket Club in ITA Nos. 381/Chny/2017, 1752 & 1753/Chny/2017, order dated 21.01.2020 has considered this issue and finally applied the principle of mutuality to the entrance fee received from non-permanent

members or non-voting members. For this, the Tribunal observed in para 8 as under:-

> 8. In the present case, a perusal of the written submission, as filed by the learned Departmental Representative, clearly is unable to show any specific restriction in respect of the usage of any of the facilities by any of the non-permanent members or members who do not have the voting right. Though, in para-7 & 8 of the written submission, the learned Departmental Representative has referred to certain specific restriction upon the usage of the facilities, none of the articles referred to in the said paragraphs when read in the Articles of Association of the club show any restriction in respect of the usage of any of the facilities. A perusal of the decision of the ld. CIT(A) in the said present case further shows that the learned CIT(A) has rightly distinguished the decision in the Presidency Club case to the effect that the rights of privilege granted to the non-voting members are very much limited. It is also noticed that the learned CIT(A) had also followed the principles laid down by the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. Bankipur Club Limited referred to supra, as also the principles laid down by the Hon'ble Madras High Court in the case of Commissioner of Income Tax vs. Willingdon Sports Club referred to supra, when adjudicating the issue of the entrance fee collected from other members to be liable to be held deleted following the principles of mutuality and consequently deleted the addition. The Revenue has not been able to dislodge these findings either.
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> This being so, we find no error in the findings of the learned CIT(A). Consequently, the order of the learned CIT(A) on this issue stands upheld.

12.1 Further, to counter the decision of Hon'ble Supreme Court in the case of The Citizen Co-operative Society, *supra,* the ld.counsel stated that the Article of Association and Bye-laws permit admission of non-voting members or stand members and once bye-laws permits, the issue is covered by the Hon'ble Supreme Court decision

in the case of Mavilayi Service Co-operative Bank Limited vs. CIT, Calicut reported in [2021] 123 Taxmann.com 161.

13. On the other hand, the ld. Senior DR relied on the assessment order and that of the CIT(A).

14. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that there are difference forms of members that are group members, stand members or non-voting members and temporary members. The stand members or non-voting members are with different types of rights and they are not allowed amenities on race days. Even they are not entitled to participate in meetings or management activities. This is specifically barred in the Article of Association and the relevant clause -4 reads as under:-

> "4. On Non-race days Stand Members are entitled to the amenities of the Club and on race days they are entitled on payment of the admission fees fixed by the Committee from time to time to all the privileges of Club members in the Club except that Club members shall have preference over all stand members in regard to balloting for boxes application for luncheons and dinners and on other occasion when accommodation is limited.
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> Stand Members are entitled to no other privileges and shall not participate in meetings of the club members."

But, the bye-laws of the club clearly admits stand members or non-voting members and they have all rights of usage of the club facilities except the above two conditions. It means that they are paying the entrance fee for the purpose of usage of the club and they are very much the members of the club. We noted that the CIT(A) and even during course of hearing, the ld. Senior DR heavily relied on the decision of Hon'ble Supreme Court in the case of The Citizens Co-operative Society, *supra.* We noted that this decision is further explained in Mavilayi Service Co-operative Bank Limited, *supra,* wherein it is held

> *"45. To sum up, therefore, the ratio decidendi of Citizen Co-operative Society Limited (supra), must be given effect to Section 80P of the Income Tax Act, being a benevolent provision enacted by the Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the Assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the world "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, Section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business, i.e. engaged in lending money to members of the public, which have a license in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench Judgement is wholly incorrect in its reading of Citizen Co-operative Society Limited (supra). Clearly, therefore, once Section 80P(4) is out of harm's way, all the Assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.*

46. It must also be mentioned here that unlike the Andhra Act that Citizen Co-operative Society Limited (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in U.P. Co-operative Cane Unions' Federation Limited vs. Commissioner of Income Tax [1997] 11 SCC 287 referred to section 80P of the Income Tax Act and then held:

> *"8. The expression "members" is not defined in the Act. Since a co-operative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the Co-operative Society claiming exemption has been formed. It is therefore, necessary to construe the expression "members" in Section 80-P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Co-operative Societies Act. The said provision reads as under:*
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> > *"2.(n). 'Member' means a person who joined in the application for registration of a Society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power have no such liability or duty;""*
> >
> > *Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i)."*

14.1 We also noted that the Chennai Bench of the Tribunal in the case of Madras Cricket Club, *supra* has considered this issue and

considered the decision of Hon'ble Supreme Court in the case of CIT vs. Bankipur Club Ltd., 92 taxmann 278 (SC) has held that the assessee is entitled to claim mutuality in respect of entrance fee collected from these non-voting right members. We noted that the Hon'ble Supreme Court in the Bankipur Club Ltd., *supra* held that

> **"5.** A similar issue came up for consideration before the Supreme Court in CIT vs. Bankipur Club Ltd. (1997) 140 CTR (SC) 102 : (1997) 226 ITR 97 (SC). The issue referred by the High Court therein was whether the profits arising from sales made to regular members of the club are entitled to exemption on the doctrine of mutuality. There also there were various kinds of members like permanent, temporary as also honorary members. The temporary and honorary members enjoyed all the privileges of the club subject to such restrictions and regulations as being prescribed by the rules and bye laws of the club. They had however, no right to vote at the meeting or bring any guest. Another appeal was in respect of Ranchi Club where the issue was whether the income derived by the assessee club from house property let to its members and their guests is not chargeable to tax. The High Court therein had held that income derived by it from its members or their guests and sale of liquor to its members and guests was not taxable. There were several other appeals also. The main issue canvassed by the Revenue before the Supreme Court was as under :
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> "Whether the assessee-mutual clubs, were entitled to exemption for the receipts or surplus arising from the sales of drinks, refreshments, etc. or amounts received by way of rent for letting out the buildings or amounts received by way of admission fees, periodical subscriptions and receipts of similar nature from its members ?"
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> The Tribunal as also the High Court had recorded a finding that these amounts received by way of admission fees, periodical subscriptions etc. from the members of the clubs were only towards the charges for the privileges, conveniences and amenities provided to the members, which they were entitled to as per the rules and regulations of the respective clubs. It was further recorded that the facilities were offered only as a matter of convenience for the use of the members and their friends, if any, availing of the facilities occasionally. The services offered were not done with any profit motive and were not tainted with commerciality. In view of these findings the Court held that the activity of the clubs cannot be considered to be trading activity and the surplus/excess of receipts over the expenditure as a result of mutual agreement cannot be said to be "income"

for the purpose of the Act. The Supreme Court thereafter relying on various English decisions held as under :

"We understand these decisions to lay down the broad proposition—that, if the object of the assessee company claiming to be a "mutual concern" or "club" is to carry on a particular business and money is realised both from the members and from non-members, for the same consideration by giving the same or similar facilities to all alike in respect of the one and the same business carried on by it, the dealings as a whole disclose the same profit-earning motive and are alike tainted with commerciality. In other words, the activity carried on by the assessee, in such cases, claiming to be a "mutual concern" or "members club" is a trade or an adventure in the nature of trade and transactions entered into with the members or non-members alike is a trade/business/transaction and the resultant surplus is certainly profit income liable to tax..."

The Court went on to observe that:

"'at what point, does the relationship of mutuality end and that of trading begin' is a difficult and vexed question."

The Court then proceeded to hold:

"Whether or not the persons dealing with each other, are a 'mutual club' or carrying on a trading activity or an 'adventure in the nature of trade', is largely a question of fact."

It is thus discernible that in those cases where the facilities extended by the clubs to their members are as a part of usual privileges, advantages and conveniences attached to the members of the club, said activity cannot be said to be trading activity. On the other hand, if the activities have disclosed profit-earning motive and are tainted with commerciality, then it ceases to be mutuality and the very claim that the assessee is mutual concern of the members club would be of no consequences.

Once a finding is recorded that there is no commerciality and what is being offered are usual privileges, advantages and conveniences that would attract the principle of mutuality. Such a finding and consequent applicability of the principle cannot be interfered with unless Revenue from the record points out that the findings are totally perverse. In the instant case, as we have noted earlier, the Revenue has not disputed that fact. What is only disputed is whether the entrance fees received by the assessee is capital receipt and the commuted value of subscription for life members has to be taxed or treated as capital receipt.

6. The Revenue it appears have based their submission on the judgment of this Court in W.I.A.A. Club Ltd. (supra). The membership of the club consisted of ordinary members and life members. The ordinary members were paying entrance fees and annual subscription. The life members were paying larger entrance fees without any liability to pay annual subscription. The club was extending similar facilities both to ordinary and life members. The issue of mutuality was neither argued nor raised or was in issue before the learned Bench of this Court. It is on the facts there and without considering the principle of mutuality that the learned Bench proceeded to hold that the amount paid by the members had two elements in it. The part of the amount paid as entrance fees which was paid to the club with a view to acquiring the right to avail of the services and facilities extended by the club. The other part was a consolidated commuted payment in lieu of annual subscription. The Court held that that part of the entrance fees which was a compounded payment for annual subscription would be income and the balance would be a capital receipt. In our opinion, considering the judgment of the Supreme Court in Bankipur Club Ltd. (supra) and the issue of mutuality which has been raised in the present appeal, the judgment in W.I.A.A. Club Ltd. (supra) is clearly distinguishable. Even otherwise, in our opinion, it is doubtful whether it would be correct law considering the judgment in Bankipur Club Ltd. (supra).

In Chelmsford Club vs. CIT (supra) the Supreme Court observed that what is taxed is "income, profits or gains" earned or "arising", "accruing" to a "person". Where a number of persons come together and contribute to a common fund for the financing of some object and in this respect have no dealings or relations with any outside body, then any surplus returned to those persons cannot be regarded in any sense as profit. There must be complete identity between the contributors and the participators. If these requirements are fulfilled, it is immaterial what particular form the association takes. Trading between persons associating together in this way does not give rise to profits which are chargeable to tax. The law recognises the principle of mutuality excluding the levy of income-tax from the income of such business to which the above principle is applicable. In that case the assessee was registered as company under the Companies Act. It was however, contended that the business was governed by the principles of mutuality and therefore, income, if any earned is outside the scope of the IT Act. This argument was based on the principles that it is only income which comes within the definition of s. 2(24) of the Act that can be taxed and this definition generally excludes the income from business involving the doctrine of mutuality, except the business that is included specifically in sub-cl. (vii) of that section. The issue there was whether the income from property of the said assessee was exigible to income-tax. The Court there on facts found that the doctrine of mutuality

would apply and consequently that income from house property would not be exigible to tax.

7. From the principles which have been set out above and moreso in the judgment in Bankipur Club Ltd. (supra), even if there be temporary or honorary members who are not entitled to vote, the assessee would not cease to be governed by the principles of mutuality. Once the assessee is governed by the principles of mutuality, its income earned would not be income which would be assessable to tax.

8. For the aforesaid reasons, we are of the view that there is no infirmity in the judgment and consequently the questions as raised are devoid of merit and consequently appeal dismissed."

14.2 In view of the above, recent decision of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Limited, *supra,* and the decision of Hon'ble Supreme Court in the case of Bankipur Club Ltd., *supra,* we are of the view that the assessee is entitled for claim of principle of mutuality in regard to entrance fee received from non-voting members. Hence, we allow this issue of assessee's appeal.

15. Similar are the facts in other two assessment years, hence taking a consistent view, we allow this issue in all the three appeals of the assessee.

16. The next issue in ITA No.502/CHNY/2018 for assessment year 2013-14 is as regards to disallowance of reimbursement of

expenses for non-deduction of TDS u/s.194J of the Act by invoking the provisions of section 40(a)(ia) of the Act. For this, assessee has raised the following Ground Nos.3.1 to 3.3:-

> 3.1 The CIT(A) erred in confirming the disallowance of Rs.25,27,500/- u/s.40(a)(ia) of the Act.
>
> 3.2 The CIT(A) ought to have considered that since the payments made to Host Club are in the nature of reimbursement of expenses which does not require deduction of tax at source.
>
> 3.3 The CIT(A) erred in holding that the Appellant had nothing to lose in making TDS while remitting any amounts to any other Club when the Appellant is not statutorily obligated u/s.194J of the Act to deduct TDS on reimbursement of expenses.

17. Brief facts are that the telecast expenses are incurred by assessee company which telecast its races and are paid to the telecasting company. The telecast is a close circuit one and the services are not available for the general public but only to the race clubs where intervenue bettings are conducted. For this purpose and for the usage of telecast based content on the down linking, the reimbursements are made to the respective club by the assessee. Similarly, when other clubs uses this telecast by downloading at their club site, they also reimburse the charges for this facility to the assessee, as they totally paid the telecast charges to the telecasting company which is offered as income by the assessee. When the assessee uses the down linking facility for viewing horse races

conducted by other clubs, the assessee reimburse the expenditure to them, who in turn pays the telecasting company after deducting the TDS. The AO claimed this telecast expenses as 'Host Club expenses'. According to AO, the assessee should have deducted TDS particularly when this club pays to host club, firstly which is not for reimbursement but it is a contractual obligation for requesting supply of direct relay based on which racing is made. Hence, AO disallowed the telecast expenses / host club expenses for the reason that the assessee has not deducted TDS thereby invoked the provision of section 40(a)(ia) of the Act. Accordingly, a sum of Rs.25,27,500/- was disallowed. Aggrieved assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of the AO. Aggrieved, assessee is in appeal before the Tribunal.

18. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the AO as well as the CIT(A) was of the view that the explanation of reimbursement cannot be accepted and according to them, the full facts of the telecast charges incurred by Hyderabad Race Club not being on record and the profit element in the reimbursement made by Hyderabad Race Club cannot be ruled out. According to AO as well as the CIT(A), the assessee has to deduct TDS u/s.194J of the Act

and therefore, the disallowance was made u/s.40(a)(ia) of the Act. We noted that in the similar state of facts, the Bangalore Bench of ITAT in the case of M/s. Mysore Race Club Limited in ITA No.1232/Bang/2018, order dated 21.04.2022 has considered this issue of reimbursement of expenses given to Bangalore Turf Club by Mysore Race Club Ltd., and on these reimbursement of expenses, TDS was not deducted and Tribunal i.e., Bangalore Bench of the Tribunal held that the matter was restored back to the file of the AO by observing in para 9.7 and the relevant part of the para reads as under:-

> "9.7 ……..With regard to the claim that it is only reimbursement of expenses incurred by Bangalore Turf club, in our view, it requires to be examined as to whether the Bangalore Turf club was liable to deduct tax at source from the payments made to the laboratories and if so, whether it has deducted tax at source. If the AO had accepted in the hands of Bangalore Turf club that the dope test charges are not liable to tax deduction at source or if the Bangalore Turf club has already deducted TDS, then, in our view, there is no requirement for the assessee to deduct TDS on such kinds of reimbursements. We notice that relevant facts have not been brought on record. We notice that the assessee has submitted before Ld CIT(A) that the AO has accepted the contention in AY 2014-15 that the assessee is not liable to deduct TDS on such kind of reimbursements. In view of non-availability of relevant facts, we are of the view that this issue requires fresh examination at the end of AO. Accordingly, we restore the issue of disallowance made u/s 40(a)(ia) of the Act in respect of Dope Testing Charges to the file of the AO for examining it afresh after affording adequate opportunity of being heard to the assessee."

18.1 At the time of hearing, the ld.counsel for the assessee as well as ld. Senior DR has made out no issue that the matter can be restored back to the file of the AO in the present case, as the CIT(A) has categorically noted that full facts of telecast charges incurred by Hyderabad Race Club are not on record. Accordingly, in view of the directions of Co-ordinate Bench of this Tribunal, Bangalore Bench in the case of Mysore Race Club, *supra,* we restore this issue back to the file of the AO. The AO will decide in term of directions given by Bangalore Bench, which is reproduced above. This issue of assessee's appeal is set aside to the file of the AO.

19. The next issue in this appeal of assessee in ITA No.502/Chny/2018 for assessment year 2013-14 is as regards to the order of CIT(A) confirming the action of AO in making disallowance of police and fire service charges amounting to Rs.1,96,340/-.

20. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO has disallowed these charges as the assessee has not filed any evidence to prove the payments made. Even the CIT(A) has disallowed stating that the assessee is unable to produce any vouchers or unable to put

any defense in support of its ground. Now, before us, the ld.counsel made a simple plea that let the matter go back to the file of AO to provide one more opportunity to the assessee to produce the evidence. Hence, we set aside this issue back to the file of the AO.

21. In the result, the appeals filed by the assessee in ITA Nos.501 & 503/Chny/2018 are allowed and ITA No.502/Chny/2018 is allowed for statistical purposes.

Order pronounced in the open court on 13th July, 2022 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	(महावीर सिंह)
(MANOJ KUMAR AGGARWAL)	**(MAHAVIR SINGH)**
लेखा सदस्य /ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 13th July, 2022

RSR

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.