IN THE HIGH COURT AT CALCUTTA
In appeal from its
SPECIAL JURISDICTION (INCOME TAX)
CIVIL APPELLATE JURISDICTION

ITA No. 127 of 2019
The Saturday Club Ltd.
Versus
Principal Commissioner of Income Tax, Kolkata – 3

ITA No. 135 of 2019
The Saturday Club Ltd.
Versus
Principal Commissioner of Income Tax, Kolkata – 3

ITA No. 138 of 2019
The Saturday Club Ltd.
Versus
Principal Commissioner of Income Tax, Kolkata – 3

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 7th July 2023

Appearance:
Mr. R K. Murarka, Sr. Advocate
Ms. Sutapa Roy Choudhury, Advocate
Ms. Aratrika Roy, Advocate
for the appellants

Mr. Prithu Dudhoria, Advocate
for respondents in ITA 127/2019
& ITA 135/2019

Mr. Soumen Bhattacharya, Advocate
for respondent in ITA 138/2019

The Court: These three appeals were heard together. The same points, in law and in facts, are involved in all the three appeals. The assessment years involved are 2008-09 to 2012-13 concerning the appellant/assessee, the Saturday Club Limited. Saturday Club is a recreational club.

In each of the assessment years, the appellant/assessee received on account of rent sums of money from Reliance Industries Limited for occupation of a portion of the club premises. In the assessment year 2008-09 this receipt was Rs.78,49,798/-. It may have been a little

different in the other assessment years. Now, Reliance Industries Limited is also a corporate member of the assessee club.

The substantial question of law, which arises, is whether this sum received by the appellant/assessee on account of rent is taxable under the head "Income from house property"?

Section 22 of the Income Tax Act, 1961 provides that the annual value of a property of which the assessee is the owner shall be chargeable to income tax under the head "Income from house property". Section 23 (2) clarifies that where the property consists of a house or part of a house which is in the occupation of the owner its valuation shall be taken to be nil.

In each of these appeals the assessing officer ruled that this rent receipt was to be taxed under the above heading.

On appeal, the Commissioner of Income Tax (Appeals) reversed this decision and directed that this disallowance made by the assessing officer be deleted.

On a further appeal to the Income Tax Appellate Tribunal (Tribunal), it restored the decision of the assessing officer by holding that "the income in question is taxable under the head "income from house property". The reasons in support of this decision were sought to be advanced in paragraph 5 of the tribunal's order which is set out below:-

> *"5. The law in this regard has been recently laid down by the Hon'ble Supreme Court in the case of Bangalore Club v/s. CIT 350 ITR 509 (SC), where the question for determination before the Hon'ble Supreme Court was as to whether or not the interest earned by the assessee on the surplus funds invested in fixed deposits with the corporate member banks is exempt from levy of Income Tax, based on the doctrine of mutuality? The Hon'ble Supreme Court answered the aforesaid question in favour of the revenue by holding that interest earned from deposits with banks who are*

> *members of the club would not be exempt on the principle of mutuality because the tests for application of the principle of mutuality were not satisfied. The Apex Court held that no sooner any amount is invested by an association claiming to be mutual concern in a fixed deposit with the banks the complete identity between the contributors and the participants in the funds or the amounts invested in member banks is ruptured. It held that till the surplus funds were generated and was used only amongst the members/contributors, the complete identity between contributors and participants continued. However the moment the funds are invested in fixed deposits with the banks and the funds are used for advancing loans etc. by the Bank to its customers, the identity of participants and contributors is sapped. Thus the interest earned on fixed deposits is to be brought to tax."*

Aggrieved by this order, the assessee the Saturday Club Limited has preferred these appeals in this court under Section 260A of the Income Tax Act, 1961.

On 9th September, 2019 the appeal was admitted on the following substantial question of law:

> *"Whether the Tribunal was justified in law in holding that the rent received from Reliance Industries Limited was not governed by the principle of mutuality and was taxable under the Income Tax Act, 1961"?*

Mr. Murarka, learned senior advocate appearing for the appellant has made very extensive submissions on a most interesting point of law based on the principle of "mutuality". This principle was very simply yet authoritatively laid down in a division bench judgment of our court in *Commissioner of Income Tax vs. Darjeeling Club Ltd.* reported in 153 ITR 676. The Hon'ble Mr. Justice Suhas Chandra Sen delivering the judgment wrote –

"The principles laid down in the decided cases may be briefly stated. A group of persons can form a club to provide some facilities to themselves and any excess payment for these facilities may be retained for future use. In this process, no profit is made. When these persons form themselves into a company and arrange their affairs in such a way that the company makes profit for and on behalf of the members, it has got a distinct and separate personality from the members in the eye of law, but the members are using the company and the corporate personality for obtaining goods and services. The surplus that the company gets is held on behalf of the members and for future use of the members. The members may get it back either in the shape of reduction of price or extension of facilities that are to be provided to the members in future. The important point is that the company is not acting as a business concern or a trading company on its own for the purpose of making gain. The company is being used by the members for the purpose of obtaining goods and services as their agent. A company can make profit out of its members when members are treated as customers. Where, however, all that a company does is to collect money from a certain number of people and retain the surplus fund for the benefit of those people not as shareholders of the company but as people who subscribed to it or paid for it, then there is no profit. If the people were to do the thing for themselves, there would be no profit and the fact that they incorporate a legal entity to do it for them makes no difference. There is still no profit. This is not because the corporate entity of the company is to be disregarded, but because there is no accrual of profit, the money is simply collected from the members and held on their behalf, not in the character of shareholders but in the character of those who have paid for it. The excess that is realised from the

members will be used for the benefit of the members in some form or other."

Thereafter, Mr. Murarka took us through several other decisions on this point, namely, *Commissioner of Income Tax v. Bankipur Club Ltd.* reported in 226 ITR 97, *Chelmsford Ford v. Commissioner of Income Tax* reported in 289 ITR 89, *Bangalore Club v. Commissioner of Income Tax* reported in 350 ITR 509 and *Saturday Club Ltd. v. Assistant Commissioner, Service Tax Cell* reported in (2005) Cal LT 575.

In reply, learned counsel for the revenue cited a very recent decision in *Yum! Resautrants (Marketing) Private Limited v. Commissioner of Income Tax, Delhi* reported in (2021) 7 SCC 678.

This principle of law which was canvassed by Mr. Murarka and to be deduced from these cases is this : A club is an association of persons for certain objects and purposes. It may or may not be a body corporate but it has a distinct identity of its own. This identity is akin to that of a body corporate. It is different from that of his members. However, there is a difference between the legal identity of a body corporate and that of a recreational club in certain matters. It is in these matters that the principle of mutuality is involved. The members of the club are seen both as contributors and participators. The club and its members are seen as one person. Usually a member has to pay to avail of the services and facilities provided by the club.

By way of subscription or contribution a member may contribute a sum of money to the club in a particular month. Similarly other members may also contribute this amount or any lesser or greater sum. This sum may be utilised by the club to bring in stocks of food, drinks, sports gears and other items and also be utilised for the purpose of providing facilities to its members like maintaining a swimming pool or

tennis court. The members may consume or enjoy the benefits of whatever they contribute.

The concept of mutuality is that whenever money is being spent by a particular member is also being enjoyed by that person in the form of facilities. Members or a group of persons forming the association and the association are seen as a single identity. One cannot make an income out of any sum paid to oneself or spent on oneself. In charging a member for such utility the club should not make any profit. In other words it does not make any income in excess of its expenditure. The transactions ought to have been for the benefit of all the members and also resulted in common facilities for the club.

On that principle the income of the club involving contributors and participators is not taxable.

In this case, Mr. Murarka submitted that the space given to Reliance remained an asset of the club. The sum paid by Reliance was enjoyed by each and every member of the club in the form of service or facilities offered by the club. Reliance as a corporate member and the club were to be treated as one entity and that any benefit enjoyed by Reliance was to be treated as benefit enjoyed by all the members of the club.

To this both learned counsel appearing for the revenue contended that the space provided by the club was in the exclusive occupation of Reliance. It was not being used as a facility of the club. It was an independent transaction between the club and Reliance. Although Reliance may be a corporate member it had entered into a lease agreement with the club not in the capacity of a corporate member but an independent body.

Now, these are questions of facts. These facts had to be established threadbare before any opinion on the substantial question of

law could be expressed. On examination of the order of the Assessing Office, CIT (Appeal) and the tribunal we do not find any analysis of the facts, which would go to show whether the principle of mutuality was being maintained in the subject transaction between the club and Reliance. We find that in these orders that only conclusions are made with regard to the status and the transaction between the parties.

For all these reasons, the part of the impugned order of the tribunal contained in paragraph 9 cannot stand and is hereby set aside.

We remand the appeals to the tribunal to redecide the question taking into account all the disclosures of facts made before the adjudicating authorities and the above decisions of the Supreme Court and our Court discussed by us above and to pass a reasoned order within four months of communication of this order. This remand is limited to the above issue only.

The appeals are disposed of.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

CS/R. Bose