* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **[ITA No.1757 of 2010]**

RESERVED ON: 17.03.2011
% PRONOUNCED: 30.03.2011

**COMMISSIONER OF INCOME TAX . . . APPELLANT**

Through : Ms.Prem Lata Bansal, Sr. Advocate with Mr. Deepak Anand, Jr. Standing Counsel

VERSUS

**DELHI GOLF CLUB LTD. …RESPONDENT**

Through: Mr. Kanan Kapur, Advocate

**CORAM :-**

**HON'BLE MR. JUSTICE A.K. SIKRI**
**HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether Reporters of Local newspapers may be allowed
to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

**A.K. SIKRI, J.**

1. The respondent/assessee is a premier Golf Club and is given charitable character by the Income-Tax authorities as it is registered under Section 12A of the Income-Tax Act (hereinafter referred to as 'the Act') because of the reason that its main

activity is to promote the game of golf in India. For the assessment year 2006-07, the assessee filed the return declaring income as 'NIL' claiming benefit of Section 11 of the Act. During the assessment proceedings, the Assessing Officer noticed that the assessee had received a sum of ₹ 67,84,182/- as fees from casual members at a higher rate than its permanent members. Such casual members were also not eligible for other facilities like permanent members. Therefore, the Assessing Officer was of the view that the assessee was maintaining a golf course and was exploiting the same commercially by allowing non-members to play on the same for a fee. Accordingly, he treated such activity as commercial activity, though incidental for the attainment of its object. Since the assessee had not maintained separate books of accounts for such activity, the Assessing officer invoked the provisions of Section 11(4)/11 (4A) of the Act and rejected the exemption u/s 11 to the extent of ₹ 67,84,182/- treating the same as business income. However, he allowed 25% of these receipts as expenses incurred for earning such an income.

2. We may point out that before taking the action the AO had asked the assessee to furnish complete list of casual members and fee charged from them and services enjoyed. The queries were answered by the assessee vide letter dated 19th November, 2008 in the following manner:-

> "you further desired to have list of casual members fee charged from them alongwith services enjoyed by them and receipt from the same"
>
> In this connection we bring to your kind notice that any person who is not a member of the Club and plays Golf and is above 21 years of age can play by payment of Green fees (known as Casual Membership fees) as per club rules. As per the articles of the club such persons are known as casual members and are entitled to play and have light refreshment at players lounge (annex) only for one day. The Casual Members are not entitled to use other Club facilities such as Dinning Hall, Main Bar etc. Details of Casual Member and fee charged from them amounting to ₹ 67,84,182/- is enclosed as per annexure 'D"

3. Vide another letter dated 10th December, 2008 the assessee also clarified that it had no residential facilities for members and non members; casual members could play the game of golf on payment of fee which is called as casual membership fee or "Green fee" that is based on day of play.

4. While, taking the view that allowing the golf course to be used by casual members/non members on a higher fee amounted to commercial activity, the Assessing Officer observed that in the case of assessee, casual membership and fee charged from them is nothing but business which is incidental to the attainment of the objectives of the Golf Club, as per sub-Section 4 and (4A) to Section 11 of the I.T. Act. However, since the assessee had not maintained separate books of accounts in respect of this business and the income was to be computed as per Chapter-IV of the I.T. Act. He also held that the Club is a mutual association which is for the benefit of members and their guests only. Any use of its assets by general public for a fee is commercial activity. Casual members do not enjoy the privilege except use of Golf Course for certain fee. Therefore, their nomenclature is misleading as they are not members but public who are using the facilities for a price.

5. It was but natural for the respondent to feel aggrieved by such a course of action adopted by the Assessing Officer. The assessee, therefore, challenged this order by filing the appeal before the CIT (A). Before the CIT (A), the case set up by the assessee was that it is a well known club of Delhi with existence of over five decades. Its main aim is and has always been to promote the game of golf in India. It holds tournaments of International Standard and its golf course is known for its quality.

It has members from various walks of life and has had very rich past. The department had all along, after due examination of the facts of the case, accepted and had categorically held that the activities of the assessee is not one with profit motive. Despite the department holding that the assessee's activities are not profit motivated, the AO has held that the casual membership fee charged by the assessee is business income. This is opposed to the facts of the case and is against the very decision of the department in the preceding years. To justify its stand the assessee also cited Clause-9 of the Article of Association of the assessee which defines an Associate Member in the following terms:-

> "An Associate Member is a lady or gentlemen who plays Golf and is about 21 years of age and who is admitted as such and enjoys the privileges as specified in these articles and bye-laws of the Club. An Associate Member is not a Permanent Member of the Club"
>
> The Committee may admit the following classes of the Associate Member:-
>
> Mid-Week Member
>
> 'C' Member
>
> Tenure Member
>
> Temporarily Member
>
> Honorary Member

Casual Member

As per the article of the club, non-members are not members are not allowed the use of club facility extensively as other permanent members can. The Casual Members are allowed the usage of the green to play the game of Golf by payment of Green fee. This is to allow people interested in the game of Golf and who are desirous of playing Golf at the club to play while they are in Delhi. This may include top golfers, professionals and others. These members may be called in as Walk-in members and their membership is restricted to the day and date of their coming in."

6. The assessee also highlighted the fact that undoubtedly it was covered under the definition of charitable purpose under Section 2 (15) of the Act. It also fulfilled all the requisites of Section 12 (A) of the Act as well. The assessee also took umbrage of Circular No. 395 dated 24th September 1984 issued by the CBDT which gives clarification about the promotion of sports to be a charitable purpose. Few judgments of the Apex Court and this Court were also relied upon. On going through the entire material placed before the CIT (A) and after considering the arguments of both the sides, the CIT (A) accepted the contention of the assessee and deleted the addition in the following manner:-

"I have gone through the assessment order and considered the submission of the appellant. As per clause-9 of Association of Article of appellant, Casual member is treated as Associate member and they have to make payment on the day and date of their playing. The purpose of charging casual membership fee by the appellant is for allowing public at large to lay or learn the game of golf for which appellant club has been established. I have also observed that the appellant has fulfilled the requirement of Section 2 (15) of the I.T. Act and therefore benefit u/s 12A cannot be denied. I have also gone through the circular of the CBDT, cited by the appellant supra which clearly indicates that advancement of any object beneficial to the public or a section of the public as distinguished from an individual or group of individual would be an object of general public utility. I have also considered the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang Vs. CIT wherein it was held that in the absence of an material change, a different view taken in earlier years could not be taken. In the appellant's case there no change in the activities of the club and for the sake of consistency, the view taken in earlier year should continue for subsequent year also.

> 3.7. Therefore, following the Hon'ble Supreme Court decision and CBDT circular cited above, the activities of the appellant cannot be treated as business activities and the case of the appellant is squarely covered under the judicial principles laid down and merits consideration for exemption under Section 12AA on entire income including casual membership fees and the action of the Assessing Officer is incorrect and against the principles of natural justice. I, therefore, direct to delete the addition made on account of casual membership fee as business income. The appellant succeeds on this ground."

7. It was now the turn of the Department to feel unsatisfied with such an outcome. Accordingly, it decided to assail the aforesaid order of the CIT (A) and, therefore, preferred an appeal before the ITAT. The Revenue, however, has failed to convince the Tribunal as the Tribunal vide impugned order dated 21st December, 2009 has dismissed the appeal and affirmed the view taken by the CIT (A). Still dissatisfied, the Revenue has approached this Court by way of present appeal under Section 260A of the Act as according to the Revenue the issue involved raises substantial question of law namely, whether the income of the assessee from casual member amounts to commercial activity as required under Section 11 (4A) of the Act or not?

8. Heavily relying upon the discussion contained in the orders passed by the Assessing Officer and the approach which he adopted, it was emphatically argued by the learned Senior Counsel for the Revenue that taking higher fee from casual members who were not members of the Club clearly amounted to 'commercial activity', more particularly when these casual members were not entitled to other club facilities such as dining hall, main bar etc. It was further argued that this aspect was totally glossed over by the CIT (A) as well as the ITAT who confined their discussion to the nature of the assessee's main activities and the objective of the Golf Club to see whether it was for the "charitable purpose" or not and rested their conclusion on that basis without specifically dealing with the question about the income generated by adopting the device of introducing casual members thereby allowing the public at large to play the game of golf at the respondent Golf Club and generating revenue in the process. It was stressed that such an activity has to be treated as commercial activity and, therefore, the income generated from this activity should be exigible to tax.

9. Mr.Kapoor, learned counsel who appeared for the respondent Club, contradicted the aforementioned submissions of the Revenue and insisted that no substantial question of law has arisen in this case. According to him, the two authorities below had given concurrent findings of fact supported by rationale

reasoning which deserved to be accepted, more so, when the Revenue could not point out as to how those findings were perverse. He also refuted the contention of the learned Senior Counsel for the Revenue that the main aspects were not focused or discussed. According to him, the reading of the orders of the two authorities below would clearly reveal that each and every relevant aspect was considered before arriving at a conclusion favourable to the assessee.

10. Arguments in this case were heard on 17th March, 2011 and judgment was reserved. At that time counsel for the parties desired to file written submission of their synopsis and one week's time was allowed for this purpose. Though, counsel for the respondent/assessee has filed the written submission, the learned counsel for the Revenue has chosen otherwise. In these circumstances we proceed to decide this appeal on the basis of oral argument advanced by both the parties and the written submissions filed by the respondent/assessee.

11. After giving our careful consideration, we are of the opinion that no substantial question of law is involved in the present case and the appeal warrants to be dismissed in *limini*. We would in the first instance, like to track down the following undisputed position which prevails on the record of this case:-

(i) After being established in 1950, with the main object of promotion of the game of Golf, the respondent club has consistently devoted itself to the said activity for over 6 decades, and is a well known club of credible standing and repute, with a large pool of members from various walks of life.

(ii) The object of the respondent club 'promotion of the game of golf or sport' are admittedly 'charitable', undisputedly coming under the expression 'object of general public utility' and as such existing for purposes of 'non-profit', the respondent club on that basis has consistently been held to be exempt earlier under Section 10 (23) of the Income Tax Act right and uninterruptedly from 1967 to 1998 and then under Section 12A of the Act from 1999 till date, with the according of registration by the Director Exemptions from 9.06.1999.

(iii) Further, the appellant (Director Exemptions), in line of its such consistent stand, has also confirmed the same vide its regular assessment orders passed under Section 143 (3) of the I.T. Act, for the previous (A.Y. 2005-2006) as well as the subsequent assessment year (2007-2008), through its orders dated 5.11.2007 and 24.12.2009, respectively.

(iv) It is pertinent to point out that vide orders dated 24.12.2009,passed under section 143 (3)) of the

Income Tax Act, the Director (Exemptions), has again accepted the claim of the respondent/assessee on all counts and even in respect of incidental activities of the club has been pleased to uphold the NIL return of the respondent club. This is very material aspect and the findings passed in such regular assessment order u/s 143 (3) of the Act are reproduced herein below for the sake of convenience:-

"..In respect of the incidental activities of the Golf Club, it has been stressed by the A.R. that these are part and parcel of the overall running of the Trust and any accruals from them are utilized/applied for the same purpose as set forth by the organization.

In the facts and circumstances of the case and keeping in view the National Import of the organization, no inference is deemed necessary in the return of income.

Assessed. Issue Necessary Forms."

(v) Thus, not only this position is accepted by the department that the assessee/Club would be a "charitable" in nature having regard to the objective for which it is established namely the promotion of the game of golf or sport, this position remains unchallenged for over six decades. This consistency in the approach is maintained except in the assessment in question. Curiously, even thereafter for subsequent

assessment years, the department reverted to this position as is clear from the assessment for the assessment year 2007-08.

12. These facts are sufficient to hold that no question of law arises.

13. In this backdrop we are constrained to observe that the Assessing Officer gave undue focus to the issue of casual membership when this aspect had been examined earlier by the Department and it was accepted that this was incidental activity of the Golf Club being part and parcel of the overall running of the Trust and accruals therefrom are utilized/applied for the same purpose as set forth by the assessee. Following further aspects which have been accepted by the department needs to be highlighted:-

(a) Casual membership fee has been charged from Associate Members (registered for a single day), right from 1967 uptill the date, much in like with the global practice & procedure of Golf/Sports Clubs, and in no other year was made the basis of any assessment proceedings by the department.

(b) Even otherwise, the said activity being again carried out without any profit motive, as part of the overall functioning of the club, and part of the broader activities of the

promotion of the sport of gold and as such ought to have been considered as being its integral part, especially when the character or the activities of the club or its long tradition of promotion of game of golf has not been disputed by the department.

14. At this stage, we would also like to extract below the relevant discussion contained in the order of the Tribunal with which we are in agreement:-

"We have considered the rival contentions carefully gone through the order of the authorities below and also perused the memorandum and article of association of the assessee club. As per clause-9 of the articles of association, the club was entitled to admit various classes of persons which also included casual members in addition to permanent and tenure members. The casual members were also using the Golf Course in the same manner as permanent and tenure members were using. The AO has declined fees received from the casual members as income u/s 12A merely because assessee club was not maintaining separate books of accounts regarding this business activity. As per AO it was a business income and not income from the mutual interest that was not liable for exemption u/s 11. There is no merit in the AOs' action for treating the fees received from the casual

members as business income. The assessee club was maintaining required records with regard to income and expenditure. There is no requirement of maintaining separate accounts with respect to fees received from different kinds of members, as provided in the articles of Association. The assessee, Delhi Golf Club Limited is a well known club having been in Delhi for over five decades. Its main object is to promote the game of gold in India. It has members from various walks of life. Even the department all along after due examination had accepted that activity of the assessee as not for profit motive. In spite of this consistent finding of the department itself in the past, without any cogent reason, the AO has held that because the assessee was not maintaining separate books of accounts of such casual members it was a business income of the assessee not liable for exemption. As per the articles of the club, the casual members were allowed the usage of green to play the game of golf. The casual members were allowed to play at the club, when they are in Delhi. There is no finding by the AO to the effect that activities of the club during the year were not covered by the definition provided u/s 2 (15) i.e. Charitable purpose which includes relief of poor, educational and advancement of any other object of general public utility. In order to satisfy the requirement of being an "object

of general public utility" within the meaning of section 2 (15) of the Act, it is necessary that the benefit should reach each and every person of the country or the state. It is sufficient if it reaches a sizable number of members of the Public. It is therefore clear that for an association to be recognized and given benefit of Section 12(A) of the I.T. Act, its objectives listed should cover any one or all of the following laid down principles:-

A. Object of General Public Utility within the meaning of Section 2 (15) means that the benefit need not reach each and every person. It is sufficient if it reaches a sizable number of members of the public.

B. To serve as charitable purpose object should be to benefit the mankind and not the whole of mankind in a particular country or province.

C. The section of public which is expected to benefit should be well defined even though it does represent only a portion of the mankind.

D. The intention of providing the benefit to portion of the public as individual should be clearly spelled out.

6. The question whether promotion of sports and games can be considered as being charitable has been examined. The Board is advised that the advancement of any object beneficial to the public or a section of the public as distinguished from an individual or group of individuals would be an object of general public utility. In view thereof, promotion of sports and games is considered

to be a charitable activity within the meaning of Section 2 (15) of the I.T. Act, 1961. Therefore, an association or institution engaged in the promotion of sports and games can claim exemption under section 10 (23) of the Act relating to exemption from tax of sports associations and institutions having their object the promotion control regulation and encouragement of specified sports and games."

15. This appeal is accordingly dismissed.

**(A.K. SIKRI)**
**JUDGE**

**(M.L. MEHTA)**
**JUDGE**

**MARCH 30,2011**
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