

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 7TH FEBRUARY 2008 / 18TH MAGHA 1929

ITA.No. 194 of 2001()

(AGAINST ORDER DATED 11/04/2001 IN ITA.745/COCH/1994 of
I.T.A.TRIBUNAL,COCHIN BENCH)
.....

APPELLANT / ASSESSEE :

INVESTORS CLUB TRICHUR, MAHATHMA PRESS BUILDING,
PALACE ROAD, THRISSUR, KERALA, PIN - 680 020,
REPRESENTED BY ITS SECRETARY
SHRI.K.O.JOSE, S/O.OUSEPH, AGED 41 YEARS.

BY ADV. SRI.M.UNNIKRISHNA MENON

RESPONDENTS/REVENUE:

THE COMMISSIONER OF INCOME TAX, COCHIN.

BY ADV. SRI.P.K.R.MENON,SR.COUNSEL,GOI(TAXES)
SRI.GEORGE K. GEORGE, SC FOR IT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 07/02/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.N.RAMACHANDRAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

I.T.A. No. 194 of 2001

Dated, this the 7th day of February, 2008

J U D G M E N T

C.N.Ramachandran Nair, J.

The appeal is filed against the order of the Income Tax Appellate Tribunal confirming disallowance of income tax exemption claimed by the appellant. The main income of the appellant, in respect of which the exemption is claimed, is floor charges collected for allowing use of the space and facilities of the appellant for trading in shares / stock. Even though appellant claimed that appellant has permitted only its members to trade in shares / stock in its premises, there is no document to prove it, as vouchers and the records were admittedly destroyed to save the members from individual tax liability. In any case, we find that the Tribunal accepted appellant's contention that share trading was permitted only to its members.

2. The question raised before the Tribunal was as to whether the appellant was entitled to exemption on the ground of mutuality? In other words, the claim is that the appellant's benefit of the floor charges collected from members goes back to the same

members, and so much so, based on principles of mutuality appellant's income is entitled to exemption. The Tribunal has found that the appellant was not giving any benefit to its members and floor charges were collected pertaining to trade of shares on behalf of outsiders by the members. Therefore, the claim of mutuality was turned down by the Tribunal.

3. We do not know, how appellant can claim exemption on principle of mutuality, when appellant has a case that it is entitled to exemption as a charitable institution and it has even got registration under Section 12A of the Income Tax Act. In any case, since the findings of the Tribunal on facts are contrary to the principle of mutuality, we do not find any ground to interfere with the order of the Tribunal. So far as, the claim of exemption as a charitable institution is concerned, we find that petitioner's institution does not qualify exemption by virtue of the bar contained in Section 11(4A) of the Income Tax Act. The Tribunal has extracted the relevant provision of the Act, which disqualifies Appellant for exemption. Since on facts, the Tribunal found that Appellant comes within the mischief of Section 11 (4A) of the IT

Act, we do not find any ground to interfere with Tribunal's order. Moreover, since disallowance of exemption is based on findings of facts, there is no substantial question of law arising out of the Tribunal's order. The Income Tax Appeal is, therefore, dismissed.

(C.N.RAMACHANDRAN NAIR, JUDGE)

(T.R.RAMACHANDRAN NAIR, JUDGE)