IN THE HIGH COURT OF SINDH AT KARACHI

I.T.R. No.455 of 1990

Present:
Mr. Justice Irfan Saadat Khan
Mr. Justice Zafar Ahmed Rajput

J U D G M E N T

Date of hearing: 26.02.2016.

Applicant: Sindh Club Karachi through Mr. Iqbal Salman Pasha, Advocate.

Respondent: Commissioner of Income Tax, South Zone, Karachi. through Mr. Jawaid Farooqui, Advocate.

IRFAN SAADAT KHAN, J. This Income Tax Reference (I.T.R) has been referred by the Income Tax Appellate Tribunal (ITAT) under Section 66(1) of the Income Tax Act, 1922 (the Act) by referring the following question of law arising out of its order for an answer by this Court:-

> *"Whether on the facts and in the circumstances of the case the doctrine of mutuality would be applicable on receipts for temporary accommodation of the fully furnished chambers of the Club inclusive of charges of various amenities and would not be chargeable to income-tax."*

2. Briefly stated the facts of the case are that the applicant/ assessee is a social club formed in the year 1871 with restricted membership and was being assessed as Association of Persons (AOP). The assessment years under question are 1972-73 to 1978-79. The returns of income for the years under consideration were filed by declaring surplus over expenditure, rent received from the members calculated on the basis of municipal valuation, etc. The assessee in all the years under consideration claimed

exemption from tax on the basis of principle of "doctrine of mutuality" (DOM) since it was claimed by the assessee that the club had received from its members certain amounts by providing them various services which were not taxable as no one can generate income from his ownself. The assessments for the years under consideration were made on different dates in which the Income Tax Officer (ITO) observed that the amounts received by the club from its members for providing temporary accommodation to them was assessable under Section 9 and not 10 of the Act, hence these receipts were not exempt from tax. As per the ITO only the incomes earned by the club under Section 10 of the Act, which were the incomes, profits and gains from business, profession or vocation of the club, would be exempted from tax on the ground of DOM but the amounts received by the club from its members by providing them temporary accommodation was not assessable under Section 10 rather the same is assessable under Section 9 of the Act, which deals with income from house property, which was not exempt from the tax. The assessment orders for all the years under consideration were passed by the ITO by calculating the amounts received from the members for providing them temporary accommodation after deducting necessary expenditures therefrom and taxing the remaining amount as an income earned by the club assessable under Section 9 of the Act.

3. Being aggrieved with the orders passed by the ITO the appeals were filed by the assessee /club before the Commissioner of Income Tax (Appeals) [CIT(A)] who vide his consolidated order dated 26.4.1983 upheld the orders of ITO and dismissed the appeals. Being aggrieved with the order passed by the CIT(A), appeals were filed by the assessee /club before the ITAT who also

vide its consolidated order dated 31.10.1984 dismissed the appeals filed by the assessee/club by upholding the orders of the ITO as well as that of CIT(A). Being aggrieved with the order passed by the ITAT reference applications under Section 66(1) of the Act were filed by requiring the ITAT to refer three questions of law to the High Court for its legal opinion. However, the ITAT vide its order dated 29.7.1985 referred only one question of law mentioned supra for opinion of this Court.

4. Mr. Iqbal Salman Pasha Advocate has appeared on behalf of the applicant/assessee/club and submitted that Sindh Club is a private club owned and managed by its members who receives subscription and other charges from its members for providing various facilities/services, etc. to them and since Sindh Club is a social club and is not engaged in any trading activity hence the amounts received from its members could not be considered to its income assessable and liable for tax as the principle of DOM is squarely applicable and no one can generate income from oneself. According to the learned counsel the Tax Authorities as well as the ITAT erred in considering the amounts received by the club from its members for providing them temporary accommodation as its income from house property liable for tax. He stated that the Income Tax Act 1922, before its repeal, was applicable in India and Pakistan both and there are a plethora of judgments given by the Indian Superior Courts wherein it was held that the amounts received from the members by a club is not liable for tax on the principle of DOM. He has further submitted that the assertion of the ITO that the amounts received from the members for providing them temporary accommodation was income from house property assessable under Section 9 of the Act is uncalled for as according

to the learned counsel irrespective of the nomenclature given to the amounts received by the club for providing services/facilities to its members, was exempt from tax on the ground of DOM, subject to the condition that there should not be any motive of commercial activity or these amounts should not be received from the non-members, which in his view was not the case of the department. The learned counsel has also submitted that the perusal of the record would reveal that since the amounts were received by the club for providing temporary accommodation to its members it was in fact a service/facility to the members on which the principle of DOM would squarely apply and hence in his view cannot be taxed.

5. Mr. Pasha has maintained that the principle of DOM came-up under discussion in a number of cases before different High Courts of India wherein divergent views were taken, however, in the case of CHELMSFORD CLUB VS. COMMISSIONER OF INCOME-TAX [(2000) 243 ITR 89] the Supreme Court of India, after taking into consideration all the decisions given by different High Courts of India, came to the conclusion that the amounts received by a club from its members for providing them services is exempt from income tax on the ground of DOM. The learned counsel also maintained that the order passed by the ITAT was squarely based upon the decision given in the case of CIT VS. WHEELER CLUB LIMITED [(1963) 49 ITR 52], which according to the learned counsel has been overruled by the Supreme Court of India in the case of CHELMSFORD CLUB and the Supreme Court of India has declared the said judgment to be not a good law. Hence, according to the learned counsel the decision given by the ITAT may be set aside by answering the question in affirmative. The learned counsel also invited our attention to the decision given in the case of

COMMISSIONER OF INCOME TAX PUNJAB AND NWFP VS. THE LYALLPUR CENTRAL CO-OPERATIVE BANK LTD. (PLD 1959 (W.P) Lahore 627) and stated that in this judgment the Lahore High Court has held that "income derived from members for whose benefit a co-operative credit society is constituted is not taxable on the ground of DOM". Mr. Pasha has also placed his reliance on the following decisions:-

1) COMMISSIONER OF INCOME TAX VS. NATIONAL SPORTS CLUB OF INDIA ((1995) 230 ITR 777)

2) COMMISSIONER OF INCOME TAX VS. BANKIPUR CLUB LTD. ((1997) 226 ITR 97)

3) COMMISSIONER OF INCOME TAX VS. RANCHI CLUB LTD. ((1992) 196 ITR 137)

4) THE PRESIDENCY CLUB LTD. VS. COMMISSIONER OF INCOME TAX, MADRAS ((1981) 127 ITR 264).

Apart from the above Indian decisions, Mr. Pasha has also relied upon the following unreported and reported decisions given by learned Division Benches of this Court:-

1) ITR No.423 of 1997 (M/S. HARMONE LABORATORIES PAKISTAN (PVT) LTD. KARACHI VS. THE COMMISSIONER OF INCOME TAX, CENTRAL ZONE-B, KARACHI)

2) Income Tax Appeal No.850 of 2000 (THE COMMISSIONER OF INCOME TAX VS. M/S LYLOYD'S REGISTER OF SHIPPING).

3) Income Tax Appeal No.241 of 2000 alongwith ITA Nos.240 & 242 of 2000 (COMMISSIONER OF INCOME TAX, COMPANIES-III, KARACHI VS. M/S. PETROLEUM INSTITUTE OF PAKISTAN (PVT) LIMITED.

4) COMMISSIONER OF INCOME TAX VS. SIND CLUB KARACHI ((1987) 56 Tax 75)

As per the learned counsel the decision given in Income Tax Appeal No.850 of 2000 was upheld by the Hon'ble Supreme Court of Pakistan in Civil Petitions No.375-K to 382-K of 2011.

6. Mr. Pasha has further stated that in some of the subsequent assessment years the department/ respondent has itself granted exemption to the assessee(s) on the principle of DOM and has placed before us some assessment orders passed by the Income Tax Authorities in this behalf. The learned counsel has also stated that even the Excise & Taxation Department has considered the club as a non-profit organization and has filed a statement by attaching the Byelaws of the club as well as an order of the Director Excise & Taxation (Taxes –II) Karachi dated 17.04.2013 wherein it was observed that the club is not liable for payment of Hotel Tax on the rooms given by it to its members on rent. He, therefore, in the end has submitted that since the department/ respondent was not justified in assessing the impugned amounts received from its members by the club as its property income assessable under Section 9 of the Act, the answer to the above question, referred by the ITAT, may be given in affirmative i.e. in favour of the applicant/assessee/club and against the respondent/department.

7. Mr. Jawaid Farooqui Advocate has appeared on behalf of the respondent/department and has vehemently refuted the arguments of the learned counsel for the applicant/assessee and stated that the Income Tax Authorities as well as the ITAT through their erudite and exhaustive orders have come to the right conclusion that the amounts received by the club from its members by providing them temporary accommodation was taxable under the provisions of Section 9 of the Act and hence no interference in this behalf is warranted. The learned counsel then read out the provisions of Sections 9 and 10 of the Act to support his view point.

He, however, conceded that the decision given in the case of CIT VS. WHEELER CLUB LIMITED (supra) has been overruled by the Supreme Court of India. The learned counsel then distinguished the decisions relied upon by the learned counsel for the applicant/assessee by stating that the decisions of Indian Jurisdiction are not applicable since in these decisions it was the Income Tax Act 1961, which was enacted after the repeal of Act 1922 in India, which has been discussed hence the decisions relied upon by the learned counsel for the applicant/assessee are distinguishable.

8. Mr. Farooqui has submitted that the decision given in the case of LYALLPUR CENTRAL CO-OPERATIVE BANK and SINDH CLUB are distinguishable as in those decision the provisions of Section 9 of the Act on the principle of DOM were not discussed. According to him, the decisions relied upon by the learned counsel for the applicant/assessee pertaining to the Division Benches of this Court are also distinguishable as in those decisions the assesses were not a social club. The learned counsel finally submitted that the amounts received by the club squarely fall under Section 9 of the Act and, thus, were rightly taxed by the department and the appeals were rightly dismissed by the CIT(A) as well as ITAT. In support of his above contentions, Mr. Farooqui has placed reliance upon the following judgments:-

1) KARACHI GYMKHANA VS. COMMISSIONER OF INCOME TAX (1986) 53 Tax 1)

2) COMMISSIONER OF INCOME TAX VS. MUSHTAQ AHMED (1989) 59 Tax 20)

9. We have heard both the learned counsel at considerable length and have also perused the record and the decisions relied upon by them.

10. Before proceeding any further, we deem it expedient to reproduce herein below the relevant provisions of section 9 and 10 of the Act:

Section-9

9. (1) The tax shall be payable by an assessee under the head "Income from Property" in respect of the bona fide annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of any business, profession or vocation carried on by him the profits of which are assessable to tax, such to the following allowances, namely:

(i) Where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value;

(ii) Where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value;

(iii) The amount of any premium paid to insure the property against risk of damage or destruction;

(iv) Where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge; where the property is subject to an annual charge not being a capital charge, the amount of such charge; where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital the amount of any interest payable on such capital:

Provided that no allowance shall be made in respect of any interest or annual charge payable without Pakistan and chargeable under this Act, not being interest on a loan issued for public subscription before the first day of April, 1938, except interest or a charge on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent for the payee in Pakistan who be assessed under section 43.

Explanation. – The expression "annual charge", as used in this clause, includes any tax leviable, in respect of property or income from property, by a local authority (including a Cantonment Board) or a Provincial Government or the Central Government, but does not include the tax leviable under this Act;

(v) any sum paid on account of land revenue in respect of the property;

(vi) in respect of collection charges, a sum not exceeding the prescribed maximum;

(vii) in respect of vacancies, that part of the annual value, which is proportional to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the annual value appropriate to any vacant part, which is proportional to the period during which such part is wholly unoccupied;

Provided that the total amount deductible under this sub-section in respect of property is the occupation of the owner for purposes of his own residence shall not exceed the annual value of such property as determined under the proviso to sub-section (2);

2) For the purposes of this section, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year:

Provided that where any such property is in the occupation of the owner for purposes of his own residence and the annual value thereof determined (hereinafter referred to as the said annual value) –

(a) does not exceed six thousand rupees, no tax under this section shall be payable by the owner in respect of the said property;

(b) exceeds, six thousand rupees, a deduction of six thousand rupees shall be made from the said annual value and the balance so arrived at or a sum equal to ten per cent of the total income of the owner, whichever is the less, shall, for purposes of assessment under this section, be deemed to be annual value of such property:

"Provided further that where an assessee has more than one building in his occupation for purposes of his residence, the "annual value" shall mean the aggregate amount of the annual value of all such buildings."

(3) Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income.

Section-10

10. (1) Subject to the provisions of this Act, the tax shall be payable by an assessee under the head Profits and gains of business, profession or vocation in respect of the profits or gains of any business, profession or vocation carried on by him.

11. It would not be out of place to mention that after the repeal of the Act 1922, Income Tax Act 1961 has been promulgated in India. The provisions of sections 9 and 10 of the Act 1922 now find place in Income Tax Act 1961 as sections 22 and 28 of the said Act. In Pakistan also the Income Tax Act 1922 was repealed through Income Tax Ordinance 1979 and the provisions of sections 9 and 10 of the Act were categorized as sections 19 and 22 to the said Ordinance. However, the Income Tax Ordinance 1979 was also repealed vide Income Tax Ordinance 2001, which is enacted now a days and the corresponding sections find mention as sections 15 and 18 of the said Ordinance.

12. The matter with regard to DOM had always remained a moot point and it is seen that in a number of judgments given by the Indian High Courts divergent views with regard to taxability or otherwise were discussed at length and keeping in view the facts and circumstances of each case the respective High Courts have held the amounts received from the members under DOM either to be taxable or otherwise. However, in the decision given in the case of CHELMSFORD CLUB (supra), the Supreme Court of Indian, by taking into consideration various judgments given by different High

Courts of India, laid the controversy to a certain extent at rest observing as under:

> *"From the above observations of this court, it is clear that it is not only the surplus from the activities of the business of the club that is excluded from the levy of income-tax even the annual value of the club house, as contemplated in section 22 of the Act, will be outside the purview of the levy of income-tax. To this extent also, we find that the judgment of the Allahabad High Court in the case of Wheeler club [1963] 49 ITR 52 is not good law.*
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> *The High Court in the impugned judgment, apart from relying on the judgment of the Allahabad High court in Wheeler Club's case [1963] 49 ITR 52 also relied on certain observations made by the same court in the case of CIT v. Delhi Gymkhana Club Ltd. [1985] 155 ITR 373 at page 376 which reads thus (page 495 of 200 ITR0:*
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> > *"Letting out of the premises is merely a provision of a facility for members. The principle of mutuality clearly applies to the surplus earned as a result of such activities. It may be that if the income can be treated as rent derived from house property, the rent or the income derived from house property will be assessable under section 22. That may be so because of the statutory fiction contained in section 22 of the Act and the scheme of the Income-tax Act, that the income from the house property will be assessable on notional basis."*
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> *In our opinion, the High Court in Delhi Gymkhana Club Ltd.'s case [1985] 155 ITR 373, has not laid down any principle of law. It has merely proceeded on a hypothesis. At any rate the conclusion based on that hypothesis, in our opinion, being opposed to the principle accepted by us in this judgment will not be of any assistance to the Revenue.*
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> *For the reasons stated above, we are of the view that the business of the appellant is governed by the principle of mutuality even the deemed income from its property is governed by the said principle of mutuality. Therefore, these appeals have to succeed. Accordingly the appeals are allowed and the judgment impugned herein is set aside. The questions referred by the Tribunal are answered in the affirmative and in favour of the appellant. On the facts and circumstances of these cases, the parties will bear their own costs".*

In the case of COMMISSIONER OF INCOME-TAX, DELHI AND RAJASTHAN VS. DELHI RACE CLUB ((1970) 75 ITR 111), the High Court of Delhi observed as under:

> *"Free admission in the enclosures enjoyed by the members was nothing more than a mere privilege referable to their*

membership without there being a profit-earning motive. The entrance fees and periodical subscriptions paid by the members for obtaining membership of the club, which remained payable even if the racing was stopped or suspended, could not be said to be received by the assesse out of any profit motive, there was compete identity between the contributors and the participators, and the sum of Rs.11,000 received by the assesse from its members was not taxable".

In the case of COMMISSIONER OF INCOME-TAX, A.P. VS. MERCHANT NAVY CLUB ((1974) 96 ITR 261), the High Court of Andhra Pradesh observed as under:

"The supplies made by a club to its members for a price was not a sale for profit. Registration of the club as a society did not affect the nature of the transactions or the taxability of the surplus. The club in all such cases is only acting as an agent of the members for making supplies to the members. In fact the property, although, in law, it belonged to the club was for all practical purposes the property of the members of the club. No sales were effected by the club and as such there was no trade or profit and the surplus received by the club was not a profit from business assessable under section 10 of the Indian Income-tax Act, 1922, or income from other sources under section 12 of the Act."

In the case of PRESIDENCY CLUB LTD. (mentioned above), the Madras High Court observed as under:

"The assesse had not indulged in any trade or business as such but was merely organizing a social activity confined to its members. Any profit that arose was incidental to the activities which were mutual in nature. The receipt from letting out the rooms was, therefore, not liable to tax".

In the case of COMMISSIONER OF INCOME-TAX, DELHI II. VS. DEHLI GYMKHANA CLUB ((1985) 155 ITR 373), the Delhi High Court observed as under:

"Affirming the decision of the Tribunal, (i) that the club did not derive any income by letting out premises to its members. Letting out of the premises was merely a provision of a facility for its members. The principle of mutuality clearly applied to the surplus earned as a result of such activities and the surplus was not assessable to income-tax".

In the case of COMMISSIONER OF INCOME-TAX VS. TRIVANDRUM CLUB ((1989) 177 ITR 550), the Kerala High Court observed as under:

> *"That the Commissioner (Appeals) and the Tribunal had found that during the relevant accounting period, no non-member was allowed to enjoy the facilities of the club and so long as the occupation of the rooms was referable to the amenities provided for the members themselves, no income could be said to have been earned by the club and there was no trading element involved, which was a pure finding of fact. Therefore, the assesse-club was entitled to exemption on the doctrine of mutuality and no question of law arose for reference."*

In the case of CAWNPORE CLUB LTD VS. COMMISSIONER OF INCOME-TAX ((1990) 183 ITR 620), the Allahabad High Court observed as under:

> *"The income derived by the assessee, a club run for the benefit of its members, from letting out rooms to its members is to be assessed as "income from other sources" and not as "income from property."*

In the case of RANCHI CLUB LTD. (cited above), the Full Bench of Patna High Court observed as under:

> *"No person can trade with himself and make an assessable profit. If, instead of one person, more than one combine themselves into a distinct and separate legal entitle for the purposes of rendering services to themselves or for the supply of refreshments, beverages, entertainment, etc., by overcharging themselves, the resulting surplus is not assessable to tax if the surplus is to be refunded to the members. The contributors to the common fund and the participators in the surplus must be an identical body. That does not mean that each member should contribute to the common fund or that each member should participate in the surplus or get back from the surplus precisely what he has paid. What is required is that the members as a class should contribute to the common fund and participators as a class must be able to participate in the surplus. It is immaterial whether the surplus is paid back to the members in cash or is put to reserve for development and for providing better amenities to the members. When the body of individuals is incorporated into a company or formed into a registered society, what is essential is that it should not have dealings with an outside body which result in surplus. The participation of the members in the surplus must be in their character as contributors to the common fund for as consumers and not as share-holders getting dividends on*

their share amount or as debenture holders earning interest. In all cases of incorporation as a company or as a registered society, the proper mode of regarding the company or the registered society is that it is a convenient instrument or medium for enabling the members to conduct a social club, the objects of which are immune from every taint of commerciality. The property of the incorporated company or a registered society, for all practical purposes in this behalf, is considered as property of the members. A members' club formed for social intercourse and for either recreation or for cultural activities cannot be considered to trade for profits so as to make its surplus taxable in law when it over-charges its members for the supply of refreshments, beverages or amenities to its members. Such supplied are not sales as there is no element of transfer of property in them. But this principle cannot have any application in respect of the surplus received from dealings with non-members. It is not difficult to conceive of cases where one and the same concern may indulge in activities which are partly mutual and partly non-mutual. The principle of mutuality can, in such cases, be confined to transactions with members".

In the aforesaid decision it has further been observed as under:

"Merely because the assesse company had entered into transactions with non-members and earned profits out of transactions held with them, its right to claim exemption on the principle of mutuality in respect of transactions held by it with its members was not lost. The assesse was a mutual concerned. The income derived by it from its house property let to its members and their guests and from the sale of liquor, etc., to its members and their guests was not taxable in its hands".

In the case of BANKIPUR CLUB (supra), the Full bench of Patna High Court observed as under:

"The set of rooms are also let out only to the members and if guests stay, the rooms are booked in the names of the members alone who alone can pay the charges. Therefore, the assesse-club is a mutual concern and the income from the guest houses received from the members of the club for their use and the use of their guests is entitled to exemption from income-tax."

In the case of BANKIPUR CLUB LTD. (supra), the Supreme Court of India observed as under:

"The receipts for the various facilities extended by the clubs to its members, as part of the usual privileges, advantages and conveniences, attached to the membership of the club, could not be said to be "a trading activity." The surplus-excess of receipts over the expenditure-as a result of mutual arrangement, could not be said to be "income" for the purpose of the Act."

13. We will now discuss various decisions on this issue given by the High Courts of Pakistan.

In the case of LYALLPUR CENTRAL CO-OPERATIVE BANK LTD. (supra), the Lahore High Court observed as under:

> *"Where the assesse, a co-operative Bank, constituted to facilitate the operation of registered co-operative societies, and, whose funds were to be applied to the furtherance of that object, advanced loans to its members and other parties – on the question whether in the circumstances of the case, interest recovered by assessee from its members, both individuals and co-operative societies was income assessable to tax?*
>
> *Held: the income derived from members for whose mutual benefit the assesse bank was constituted could not be taxed."*

The decision relied upon by the learned counsel for the respondent in the case of KARACHI GYMKHANA is found to be distinguishable from the facts as in that judgment the question was with regard to taxability of a notional income which surely is not the subject matter of the instant ITR. The next decision relied upon by the learned counsel for the respondent in the case of MUSHTAQ AHMED is also found to be distinguishable from the facts since in that decision the house in which the parents of the assessee were living was held by a Division Bench of this Court to be considered as under self-occupation. The decision relied upon by the learned counsel for the applicant in the case of SIND CLUB is found to be distinguishable as in that case the question of procedure of assessment was discussed, which is not the subject matter of this ITR. The decision relied upon by the learned counsel for the applicant in the case of M/S. LYLOYD'S REGISTER OF SHIPPING (Income Tax Appeal No.850 of 2000) is also found to be distinguishable as in that case the question was with regard to the

taxability or otherwise of the remittance received by the assessee voluntarily from its U.K. office without any contractual obligation. The decision relied upon by the learned counsel for the applicant in the case of M/S. HARMONE LABORATORIES PAKISTAN (PVT.) LTD. (ITR No.423 of 1997) is also found to be distinguishable as in that case the question was with regard to taxability or otherwise of a subsidy. However, in the decision given in the case of M/S. PETROLEUM INSTITUTE OF PAKISTAN (PVT.) LTD. (Income Tax Appeal No.241 of 2000) a Division Bench of this Court has observed as under:

> *"10. Having considered the facts and circumstances of the present case and the case law relied upon and referred to above and the principles applicable, we are of the view that the doctrine of mutuality was fully applicable to the respondent assessee's case. In particular, we can see no material difference between the present assessee's position and that of the Karachi Chamber of Commerce in the reported decision. Indeed, the present case is perhaps on an even stronger footing inasmuch as only subscription monies and/or voluntary payments are involved. Furthermore, the fact that the members of the assessee (the contributories to the "fund") are not entitled to receive anything at all, and not even on a winding up, is not material. As the case law demonstrates, the doctrine of mutuality is fully applicable even in such a situation. In our view therefore, the amounts sought to be taxed were not income within the meaning of the 1979 Ordinance and hence not exigible to tax thereunder."*

14. It is an admitted position that the decision on the basis of which the ITAT had dismissed the appeals of WHEELER CLUB LIMITED was subsequently overruled by the Supreme Court of India by declaring the same to be not a good law, hence, in our view, the whole edifice built by the ITAT in rejecting the appeals filed by the club had crumbled to the ground. It could now be held safely, in view of the decisions cited above, that a surplus accruing to a members club from the amounts received from its members in respect of facilities /services provided to them could not be

considered to be either income or profit of the said club liable to tax, in view of the principle of DOM, since it is a settled proposition of law that neither anybody could make profit out of oneself nor members could trade with themselves. In our view, the decisions given in the cases of CHELMSFORD and LYALLPUR CENTRAL CO-OPERATIVE BANK are the complete answer to the question referred in the present ITR. We, therefore, answer the question referred to us by the ITAT in affirmative i.e. in favour of the club and against the department. The amounts thus received by the club from its members for providing temporary accommodation is hereby replied to be exempt from the ambit of tax under section 10 of the Act on the basis of principle of "**DOCTRINE OF MUTUALITY**" being fully applicable in the instant reference.

Let a copy of this order be sent to the Registrar, ITAT, now Inland Revenue Appellate Tribunal (IRAT), for doing the needful.

JUDGE

JUDGE

Karachi:
Dated: .03.2016.