an agreement entered into by the partners treating the firm's property as individual property would not have such effect unless the agreement was followed by a deed of conveyance, known to law. A similar view has been taken in a string of authorities. Those cited in this behalf being; *Commissioner of Income Tax, Tamil Nadu-I* vs. *Dadha and Company* (2); *Ram Narain and Brothers* vs. *Commissioner of Income Tax* (3) and, *Abdul Kareemia and Bros.* vs. *Commissioner of Income Tax* (4).

(6) The question posed has thus clearly to be answered in the affirmative in favour of the assessee and against revenue. This reference is disposed of accordingly. There will, however, be no order as to costs.

P.C.G.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME-TAX, JULLUNDUR,—*Applicant.*

versus

M/S NORTHERN INDIA MOTION PICTURES ASSOCIATION, JULLUNDUR,—*Respondent.*

Income Tax Reference No. 69 of 1981

27th April, 1989.

Income Tax Act, 1961—S. 256(1)—Income under the head "others" consisting of admission fee etc. received from members—Members retaining control on disposal of surplus—Principle of mutuality—Whether satisfied—Such receipts—Whether liable to be taxed.

***Held,* that** the receipts under the head 'others' were neither income liable to be taxed under the head 'business' nor under the head 'other sources'.

(Para 2)

[106 I.T.R. 542 (Gujarat) (Distinguished)]

Reference under Section 256(1) of the Income-tax Act, 1961 by the Income-tax Appellate Tribunal (Amritsar Bench), Amritsar, to the Hon'ble High Court of Punjab and Haryana at Chandigarh, for

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(2) (1983), 142 I.T.R. 792.

(3) (1969) 73, I.T.R. 423 .

(4) (1984) 145, I.T.R. 442.

its opinion on the following questions of law arising out of the Tribunal's order dated 13th February, 1981, in R.A. No. 21(ASR)/1981, in I.T.A. No. 912 (ASR)/1979, Assessment year 1977-78:

"1. *Whether on the facts and in the circumstances of the case, the principle of mutuality is applicable to assessee's receipts under the head "others".*

2. *Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the receipts under the head "others" were neither income liable to be taxed under the head "Business" nor under the head "other sources."*

Ashok Bhan, Sr. Advocate, with Ajay Mittal, Advocate, *for the Applicants.*

Balwant Singh Gupta, Sr. Advocate with Sanjay Bansal, Advocate, *for the Respondents.*

JUDGMENT

Gokal Chand Mital, J.

(1) Nothern India Motion Pictures Association, the assessee is a public Ltd. company. It is an association and its members consist of Film Distributors and Exhibitors carrying on business in the States of Punjab, Haryana, Himachal Pradesh, J & K and Chandigarh. The members contributed to the Association admission fee and periodical subscriptions and in return got service benefit from the Association to protect their rights, besides rendering general service to all the members, and if a particular member wanted specific service to be rendered, separate charges were collected for the same. For the assessment year 1977-78 the Income Tax Officer wanted to subject the assessee to tax on the income derived from the admission fee, periodical subscriptions and specific service charges received from the members. The assessee pleaded that the receipts were exempt from tax on the general principles of mutuality under the head 'others' and it was neither 'business' income nor income under 'other sources'. The Income Tax Officer did not agree with the plea on the ground that in clause 7 of the memorandum of association it was provided that upon winding up or dissolution of the Association the remaining property after the satisfaction of its debts and liabilities, shall not be paid or distributed amongst

the members but shall be given or transferred to such other institution or institutions having similar objects to be determined by the members at or before the time of dissolution, or in default thereof by the Prime Minister of the East Punjab and if this cannot be done then to some charitable object and since the amount was not to go back to the members it could not be held that principle of mutuality was satisfied. The assessee remained un-successful before the Appellate Assistant Commissioner but on further appeal the income Tax Appellate Tribunal, Amritsar, by its ably written order after referring to the various decided cases gave relief to the assessee. This is how, the Tribunal has referred the following questions for opinion.

> "1. Whether on the facts and in the circumstances of the case, the principle of mutuality is applicable to the assessee's receipts under the head 'others'."
>
> "2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the receipts under the head 'others' were neither income liable to be taxed under the head "business" nor under the head 'other sources'."

(2) The counsel for the Revenue has relied upon the following two decisions for answering the questions in favour of the Revenue :

C.I.T. Madras v. *Kumbakonam Mutual Benefit Fund Ltd.* (1).
C.I.T. Gujarat II v. *Shree Jari Merchants Association* (2).

As against the above, the counsel for the assessee has relied upon the following decisions :

(1) *C.I.T.A.P.* v. *Merchant Navy Club* (3).

(2) *C.I.T.* v. *Madras Race Club* (4).

(3) *C.I.T.A.P. II Hyderabad* v. *West Godavari District Rice Millers Association* (5). in which Gujarat decision is dissented from;

(1) 53 I.TR. 241 S.C.
(2) 106 I.T.R. 542 (Gujarat).
(3) 106 I.T.R. 261 (A.P.)
(4) 105 I.T.R. 433 Madras.
(5) 150 I.T.R. 394 A.P.

(4) *C.I.T.* v. *Cochin Oil Merchants' Association* (6), and

(5) *C.I.T.* v. *Nataraj Finance Corporation* (7).

(3) *Kumbakonam Mutual Benefit Fund Ltd.'s* case (supra) is distinguishable on facts as there the assessee was a company limited by shares; carried on banking business restricted to its share holders. It was concluded that the share-holder was entitled to participate in the profits as and when dividend was declared, even though he had not taken any loan from the respondent-assessee. On these facts, it was held that there was no complete identity between the contributors and the participators in a common fund as required by the principle of mutuality. This decision was referred to in the decisions relied upon on behalf of the assessee and yet it was held that even if there was a clause like 7, the absence of mutuality or a complete identity between the contributors and participators in a common fund was no less because the control over the disposal of the surplus remained with the contributors. The contributors by incorporating clause 7 did not deprive themselves of the control on the disposal of the surplus. Ultimately, they could agree to divide the surplus between themselves or to contribute the amount to a similar association or in a charitable trust. It is true that the Gujarat High Court decision in *Shree Jari Merchants' Association's case* (supra), does help the revenue but we are of the opinion that the real import of control over the disposal of the surplus was not kept in view. In spite of clause 7, it could not be said that the principle of mutuality in any way stood divided or was not satisfied. Therefore, agreeing with the view taken by the High Courts of Madras, Andhra Pradesh and Kerala in the cases mentioned above, we dissent from the view taken up by the Gujarat High Court.

(4) On behalf of the assessee, reference was also made to *C.I.T. New Delhi* v. *Federation of Indian Chambers of Commerce and Industry* (8), a decision of the Supreme Court. That decision was rendered under Section 11 of the Income Tax Act. 1961, in regard to the income derived by the federation of Indian Chambers of Commerce and Industry from the activities such as holding the

(6) 168 I.T.R. 240 (Kerala).
(7) 169 I.T.R. 732 (A.P.)
(8) 130 I.T.R. 186 (S C.)

Indian Trade Fair and sponsoring the conference of the Afro-Asian Organisation. That case is clearly distinguishable.

(5) For the reasons recorded above, we answer both the questions in favour of the assessee, in the affirmative. No costs.

P.C.G.

Before G. R. Majithia, J.

KAILASH KUMARI AND OTHERS,—*Appellants.*

Versus

BHOLA AND OTHERS,—*Respondents.*

F.A.O. No. 766 of 1987.

2nd May, 1989.

Motor Vehicles Act, 1939—Ss. 92, 110-A—The Tariff Advisory Committee—Instructions dated March 13, 1978—Passenger's liability—Occupants of private motor car not carried for hire or reward—Instructions of Tariff Advisory Committee—Creating right of insurance in favour of such passengers or their claimants—Instructions are binding.

Held, that the Tariff Advisory Committee, by their instructions dated March 13, 1978 had given directions to the insurance companies in regard to liability of insurance company in respect of the passengers carried in a private car. It was directed by the Committee that all existing policies should be deemed to incorporate this amendment in the insurance policies, which is to the following effect:—

> "Death or bodily injury to any person including occupants carried in the motor car provided that such occupants are not carried for hire or reward."

These instructions have the statutory force. The insurance company is now an instrumentality of the State which is bound by the statutory directions of the Tariff Advisory Committee.

(Para 3)

Held, the instructions of the Tariff Advisory Committee which is a statutory body will be deemed to have been incorporated in every