

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

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| ITA Nos. 1961 to 1964/Bang/2016 |
| Assessment years: 2010 – 11 to 2013 – 14 |

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| The Assistant Commissioner of Income Tax, Central Circle 2 (2), Bangalore. | Vs. | M/s. GMR Sports Pvt. Ltd., SKIP House, 25/1, Museum Road, Bangalore – 560 025. PAN: AADCG0588P |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | Shri Sunil Jain, C. A. |
| Revenue by | : | Shri Biswa Ranjan Sasmal, CIT DR |

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| Date of hearing | : | 14.11.2017 |
| Date of Pronouncement | : | 17.11.2017 |

ORDER

Per Bench:

All these four appeals are filed by the revenue and these are directed against four separate orders of CIT (A) – 11, Bangalore all dated 29.08.2016 for Assessment Years 2010 – 11 to 2014 – 15. All these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. There is a common grievance of the revenue in all these four years that the CIT (A) has erred in holding that depreciation has to be allowed on total franchisee cost in the first year itself on accrual basis and not on the franchisee fees paid during the relevant year in spite of this fact that as per

the agreement, if payments are not made on stipulated dates annually then it would lead to termination of agreement. The second grievance of the revenue in two years i.e. A. Y. 2010 – 11 and 2011 – 12 is this that the CIT (A) was not right in directing the AO to verify and allow the credit for TDs Rs. 503,41,204/- in A. Y. 2010 – 11 and Rs. 508,43,505/- in A. Y. 2011 – 12.

3. Learned DR of the revenue supported the assessment orders and the learned AR of the assessee supported the orders of CIT (A). Both sides agreed that facts in each year are same.
4. We have considered the rival submissions. The facts in respect of the first grievance of the revenue as noted by the AO in the assessment order page 2 Para 7 for AY 2010 – 11 are that the assessee has claimed Rs. 58,44,60,480/- as franchisee fee in its P & L Account. He further noted that as per the auction conducted by the BCCI – IPL for allotment of teams to various bidders, the assessee was one of the successful bidders and it was allotted Delhi Franchisee for a sum of Rs. 336 Crores payable in 10 year installments from 2008 to 2017 (both inclusive). The assessee is obliged to pay Rs. 33.60 Crores along with service tax. He also noted that the assessee is obliged to pay Rs. 10.08 crores as league deposit on or before 2nd January of every year and further Rs. 23.52 Crores on first day of the match of league. The AO asked the assessee to justify this claim and asked as to why it should not be capitalized. He also noted in Para 7.2 of the assessment order that as per Para 7 of the agreement with BCCI signed on 10.04.2008, in the event of league does not take place in any year, the franchisee fee deposited will be refunded and franchisee payment will be payable on first day of the match of the season. The AO also noted that accrual of right is in proportion to the payment made and accordingly, the assessee was asked to state as to why capitalization of franchisee payments may not be confined to the extent of payment made only. The assessee submitted the reply vide letter dated 23.12.2014 and the AO has noted the summary of the arguments of the assessee in the assessment order on pages 3 to 7 of the assessment order. The arguments of the assessee are that the payment of franchisee fees is for grant of license and therefore, should be allowed in the respective year as

revenue expenditure on matching principle basis and in the alternative, if it held to be capital expenditure than the entire consideration of Rs. 336 Crores plus applicable service tax payable in 10 installments should be capitalized and depreciation be allowed every year as per law. The AO held that it is capital expenditure and he also held that instead of the entire agreed consideration, only the payment actually made in the respective year should be capitalized. He noted in Para 7.9 that out of payment of Rs. 58,44,60,480/- in AY 2010 – 11, the payment of Rs. 21,17,76,000/- is an advance payment for the next year. He reduced the same and net amount of Rs. 37,26,84,480/- only was capitalized and depreciation @ 25% of this computed at Rs. 931,71,120/- was allowed and WDV to be carried forward was worked out at Rs. 27,95,13,360/-. In this manner, he made disallowance of total Rs. 49,12,89,360/- including advance payment Rs. 21,17,76,000/- and capitalization net of depreciation Rs. 27,95,13,360/-.

5. In next year i.e. AY 2011 – 12, the AO noted that the assessee has claimed Rs. 15,88,32,000/- as franchisee fee in its P & L Account. The AO added Rs. 21,17,76,000/- being advance payment in the preceding year and in this manner, he added Rs. 37,06,08,000/- in WDV brought forward Rs. 27,95,13,360/- and allowed depreciation @ 25% of this computed at Rs. 16,25,30,340/- and WDV to be carried forward was worked out at Rs. 48,75,91,020/-. In this manner, he allowed extra deduction of Rs. 36,98,340/- in this year being Rs. 16,25,30,340/- (Depreciation) minus Rs. 15,88,32,000/- being the amount debited in the P & L Account.
6. In next year i.e. AY 2012 – 13, the AO noted that the assessee has claimed Rs. 34,76,65,464/- as franchisee fee in its P & L Account. The AO added this amount in WDV brought forward Rs. 48,75,91,020/- and allowed depreciation @ 25% of this computed at Rs. 20,88,14,121/- and WDV to be carried forward was worked out at Rs. 62,64,42,363/-. In this manner, he made disallowance of Rs. 13,88,51,343/- being claim of the assessee Rs. 34,76,65,464/- minus depreciation allowed Rs. 20,88,14,121/-.

7. In next year i.e. AY 2013 – 14, the AO noted that the assessee has claimed Rs. 37,06,08,000/- as franchisee fee in its P & L Account. The AO added this amount in WDV brought forward Rs. 62,64,42,363/- and allowed depreciation @ 25% of this computed at Rs. 24,92,62,590/- and WDV to be carried forward was worked out at Rs. 74,77,87,772/-. In this manner, he made disallowance of Rs. 12,13,45,410/- being claim of the assessee Rs. 37,06,08,000/- minus depreciation allowed Rs. 24,92,62,590/-.
8. Being aggrieved, the assessee carried the matter in appeal before CIT (A) in all these four years. In all these years, this was one of the grounds raised by the assessee that the payment of franchisee fees should be allowed as revenue expenditure in respective year instead of capitalizing the same. The alternative ground was this that if it is to be capitalized, it should not be on the basis of payment but the entire agreed consideration plus service tax should be capitalized in the very first year and depreciation should be allowed on the same in each year on WDV basis. Learned CIT (A) has reproduced the submissions of the learned AR of the assessee on pages 15 to 24 of his order for AY 2010 – 11 and thereafter, decided the issue as per Para 5.2.2 of his order on page 24. This Para reads as under:-

“I have gone through the contentions raised by the appellant as well as the case laws relied upon in support of its contention. However as held by the jurisdictional Bangalore ITAT vide order dated July 29th 2016 passed in ITA No. 1488 and 1489/Bang/2014 in respect of AY 2009 – 10 and 2010 – 11 in appellant’s own case following the decision of Chennai ITAT in India Cement Limited that the entire bid price is to be paid in 10 equal installments would be an intangible asset and accordingly the appellant would be entitled to depreciation on the entire bid price plus the amount of service tax paid in any relevant year on WDV basis. The said claim of appellant would not survive and therefore, the same is dismissed.”

9. We find that in this summary manner, learned CIT (A) has rejected the claim of the assessee that the payment of franchisee fees is allowable as revenue expenditure. Regarding the alternate claim of the assessee that depreciation should be allowed on the entire amount of the bid price, he has decided the issue in Para 5.3.3 of his order in favour of the assessee by following the same two tribunal orders noted in the above Para.

10. Now, we examine these two tribunal orders followed by CIT (A) in order to find out whether this issue was decided as per these tribunal orders that the payment of franchisee fees is revenue or capital. These two tribunal orders are available on pages 183 to 204 and 205 to 270 of the paper book. We find that in the case of the assessee for A. Y. 2009 – 10 & 2010 – 11, in Para 17 of the tribunal order, the grounds raised by the revenue are reproduced as per which this is the grievance of the revenue that the CIT (A) has erred in treating the payment made by the assessee towards franchisee fee as revenue in nature. The decision of the tribunal on this aspect is contained in Para 18 of this tribunal order as per which, the tribunal says that this issue is covered in favour of the assessee by the decision of Chennai ‘C’ Bench in ITA Nos. 1343/Mds/2010, 604 & 1299/Mds/2012 dated 01.01.2016. The tribunal reproduced some portion of this tribunal order stating that this portion is relevant. The same is about the ground regarding disallowance of depreciation on the franchisee fees paid by the assessee and there is no mention about this aspect that it is capital or revenue. In fact as per Para 21 of that tribunal order on page 218 of the paper book, in that case, the assessee itself treated it as capital and claimed depreciation on the total bid price of Rs. 364 Crores paid in that case and the AO allowed depreciation only on 36.4 Crores and the issue before CIT (A) and tribunal in that case was this much only that whether depreciation is allowable on total bid price or on the amount actually paid. This issue was not in that case as to whether the franchisee fee is capital or revenue because in that case, as per both sides, it was capital but in the present case, the assessee claimed it as revenue and in original assessment proceedings u/s 143 (3) and in proceedings u/s 153A, the AO treated it as capital but restricted the depreciation to actual payment and not on total bid. In first appeal against the original assessment u/s 143 (3), learned CIT (A) held it to be revenue and against that order of CIT (A), revenue filed appeal before the tribunal and in the tribunal order in those proceedings, the tribunal decided the issue on this aspect by following the tribunal order of Chennai bench in which, capital revenue was not an issue. In the present proceedings, this was an issue before CIT (A) that whether the franchisee fee is capital or revenue but the same was decided by CIT (A) in a

summary manner that this issue is covered by the order of the jurisdictional Bangalore ITAT vide order dated July 29th 2016 passed in ITA No. 1488 and 1489/Bang/2014 in respect of AY 2009 – 10 and 2010 – 11 in appellant's own case by following the decision of Chennai ITAT in India Cement Limited. We have seen that in the case of India Cement Ltd. (Supra), capital or revenue was not an issue and therefore, on this issue, this tribunal order is not relevant and in assessee's own case in proceedings u/s 143 (3), the decision is without any reasoning and simply by following this decision of Chennai ITAT in India Cement Limited (Supra) where, capital or revenue was not an issue at all. Hence, on this aspect, the order of CIT (A) is not proper because in our considered opinion, the tribunal order in assessee's own case is by following a tribunal order on a different aspect and therefore, both these tribunal orders are not a binding precedence in respect of this issue. The order of learned CIT (A) is therefore, not sustainable on this aspect as to whether franchisee fees paid by the assessee is capital or revenue. We also notice that on this aspect, neither the revenue has raised any ground nor there is any appeal or C.O. of the assessee and therefore, in normal circumstances, we should not be concerned about the same but allowability of depreciation is dependent on this aspect. If it is a case of revenue expenditure, no depreciation is allowable. In our prima facie opinion, the expenses being franchisee fees appears to be revenue expenditure and in this regard, reliance was placed by the assessee before CIT (A) on various judicial pronouncements as noted by him on page 27 of his order. The cited judgments include the judgment of Hon'ble apex court rendered in the case of Madras Industrial Investment Company, 225 ITR 802. None of these judgments are considered by CIT (A). In our considered opinion, since allowability of depreciation depends on the correct outcome on this dispute about capital or revenue and no depreciation is allowable if it is found that the expenses in question is not capital expenditure, we set aside the order of CIT (A) and restore the matter to his file for a fresh decision about allowability of depreciation after deciding afresh as to whether the franchisee fees is capital or revenue. This requires no comment from our side that if it is found that this expense is revenue, no depreciation is allowable u/s 32.

11. Now we decide the second grievance of the revenue in two years i.e. A. Y. 2010 – 11 & 2011 – 12 in respect of credit of TDS. We find that learned CIT (A) has restored the matter back to AO to verify and allow credit of TDS in these two years. In our considered opinion, these amounts to restoration of the issue to AO and CIT (A) cannot do this. He should have decided this issue himself after obtaining remand report from the AO if felt necessary. Hence, we set aside the order of CIT (A) on this issue also and restore this matter also back to his file for a decision at his level after obtaining remand report from the AO if felt necessary.
12. In the result, all four appeals filed by the revenue are allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(LALIET KUMAR)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,
Dated, the 17th November, 2017.
/MS/

- Copy to:
1. Appellant
 2. Respondent
 3. CIT
 4. CIT(A)
 5. DR, ITAT, Bangalore.
 6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.