

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'I-2', NEW DELHI**

**BEFORE SH. H. S. SIDHU, JUDICIAL MEMBER  
AND  
SH. R. K PANDA, ACCOUNTANT MEMBER**

ITA No.1444/Del/2016  
Assessment Year: 2011-12

M/s. Marubeni India Pvt. Ltd. 5 <sup>th</sup> Floor, Lotus Tower Community Centre, New Friends Colony, New Delhi . 110017 (PAN AAACM6413A)	Vs	DCIT Circle . 16 (1) New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Rajesh Malhotra, Advocate
Respondent by	Sh. Sanjay Kumar Yadav, Sr. DR

Date of hearing:	05/06/2018
Date of Pronouncement:	06/06/2018

**ORDER**

**PER R.K. PANDA, AM:**

This appeal filed by the revenue is directed against the order passed order u/s. 143 (3)/r/w. s 144C of the IT Act for A. Y. 2011-12.

2. Ground of appeal No.1 by the assessee reads as under :-

“On the facts and in the circumstances of the case and in law the Ld. A. O., as per the direction issued by the Ld. DRP u/s. 144 C, has erred in confirming the disallowance under section 37 (1) on account of club expenditure incurred for availing facilities at various clubs amounting to

Rs.11,00,000/- . The action of authorities below is wrong, illegal, misconceived, unjustified and bad at law therefore it should be quashed.”

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of trading of items and channel between Marubeni Ground and other parties. It filed its return of income on 25.11.2011 declaring total income of Rs.15,03,48,725/-. During the course of assessment proceedings the Assessing Officer observed that the assessee has claimed club expenses of Rs. 11,00,000/-. He therefore, asked the assessee to furnish the details of the same. Since the assessee failed to provide any details as asked for by the Assessing Officer till the date of passing of the order and observing that expenses incurred for availing facilities at various clubs are for the benefit of directors of the company and the assessee company has not derived any benefit related to its business out of this expenses, therefore, the Assessing Officer held that the same is not an allowable deduction since the same is not incurred wholly and exclusively for the business of the assessee. He accordingly made addition of Rs.11,00,000/- the assessee approached the DRP but without any success. The Assessing Officer accordingly passed the final order making the addition of the same.

4. Aggrieved with such order of the Assessing Officer, the assessee is in appeal before the Tribunal.

5. The Ld. Counsel for the assessee at the outset referred to the copy of the decision of the Tribunal in assessee's own case for the A. Y. 2008-09 which is placed at paper book at page No. 142 to 163. Referring to para 10 of the said order he submitted that the Tribunal in assessee's own case has deleted the disallowance of club expenses made by the Assessing Officer in the said year. He accordingly submitted that this being a covered matter the grounds raised by the assessee should be allowed.

6. The Ld. DR on the other hand heavily relied on the order of the Assessing Officer / TPO/ DRP.

7. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Assessing Officer disallowed the club expenses of Rs.11,00,000/- debited in the Profit & Loss account on the ground that assessee has not derived any benefit from the club facilities provided to the directors and directors are only taking benefit of the same. Therefore, the expense cannot be treated as incurred wholly and exclusively for the purpose of business. We find the action of the Assessing Officer was upheld by the DRP. We find identical issue had come up before the Tribunal in assessee's own case in A. Y. 2008-09. We find the Tribunal at para 10 and 11 of the order of the has decided the issue in favour of the assessee by observing as under :-

*“10. The only other issue raised in the present appeal is against the addition of Rs.5,03,647/- made by disallowing 50% of club expenses claimed by the assessee u/s 37 (1) of the Act. The facts apropos this issue are that the assessee claimed deduction of a sum of Rs.10,07,294/- on account of Membership Fee/Annual Subscription of some clubs paid on behalf of some of the directors of the assessee company. The Assessing officer disallowed 50% of such total expenses by considering it as not wholly and exclusively for the business purposes, against which the assessee has come up in appeal before use.*

*11. After hearing both the sides. We find that this issue is no more resintegra in view of the Full bench judgment of the Hon'ble Punjab & Haryana High Court in CIT Vs. Groz Beckert Asia Ltd. (2013) 351 ITR 196 ( P&H) (FB) in which it has been held that payment of corporate membership fee has to be allowed as a revenue expenditure in the hands of the company. The Hon'ble Madras High Court in the case of CIT Vs. Sundaram Industries Ltd. (1999) 240 ITR 335 (Madras) has also held that the amount spent on club membership fee of company's directors is*

*deductible as business expenditure. Earlier, the Hon'ble Bombay High Court Otis Elevator Co. (India.) Ltd. Vs. CIT (1992) 195 ITR 682 has also taken similar view. In view of this overwhelmingly position in favour of the assessee, we order for the deletion of this addition."*

8. Respectfully following the decision of the Tribunal in assessee's own case and in absence of any contrary material brought to our notice, we set aside the order of the Assessing Officer and direct him to delete the disallowance.

9. Ground of appeal No. 2 by the assessee reads ad under :-

"On the facts and in the circumstances of the case and in law the Ld. Assessing Officer, as per the direction issued by the Ld. DRP u/s 144 C, has erred in confirming the disallowance under section 37 (1) on account of travelling expenditure incurred amounting to Rs. 53,97,876/-. The action of authorities below is wrong, illegal, misconceived, unjustified and bad at law therefore it should be quashed."

10. Facts of the case, in brief, are that during the course of assessment proceedings the Assessing Officer observed that assessee has claimed travelling and conveyance expenses to the tune of Rs.2,15,91,597/-. He observed that in the proceedings assessment year the assessee has shown expenditure of Rs. 1,48,80,022/- under the same head. He further noted that the turnover of Rs.40,97,72,404/- during the assessment year is less than that of last year. He, therefore, asked the assesses to justify the same. In absence of any reply from the side of the assessee, the Assessing Officer disallowed an amount of Rs.53,97,876/- on ad-hoc basis being 25% of the total expenditure which was upheld by the DRP.

10.1 It is submission of the Ld. Counsel for the assessee that no details were called for by the Assessing Officer. It is also his submission that given an opportunity he is in a position to substantiate with evidence to the

satisfaction of the Assessing Officer regarding the travelling and conveyance expenses debited in the P & L account.

11. Considering the totality facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the Assessing Officer with the direction to give an opportunity to the assessee to substantiate with evidence to his satisfaction regarding the allowability of travelling and conveyance expenses debited in the P & L account. Needless to say the Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The ground raised by the assessee is accordingly allowed for statistical purposes.

12. Ground of appeal No.3 was not pressed by the Ld. Counsel for the assessee for which Ld. DR has not objection. Accordingly the above ground is dismissed as not pressed.

13. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 06.06.2018.

Sd/-  
**(H. S. SIDHU)**  
**JUDICIAL MEMBER**

*\*NEHA\**

Date:- 06.06.2018

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

		Date	
1.	Draft dictated on	05.06.2018	PS
2.	Draft placed before author	05.06.2018	PS
3.	Draft proposed & placed before the second member	06.06.2018	JM/AM
4.	Draft discussed/approved by Second Member.	06.06.2018	JM/AM
5.	Approved Draft comes to the Sr.PS/PS	06.06.2018	PS/PS
6.	Kept for pronouncement on	06.06.2018	PS
7.	File sent to the Bench Clerk	06.06.2018	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		