

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘B’, CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SHRI SANJAY GARG, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No.171/Chd/2018

निर्धारण वर्ष / Assessment Year : 2012-13

The A.C.I.T., Circle-6, Ludhiana.	बनाम	M/s Majestic Hotels Ltd., Ferozepur Road, Ludhiana.
स्थायी लेखा सं./PAN NO: AAACM9066F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Jagdeep Goel, CIT DR

राजस्व की ओर से/ Revenue by : Shri R.S. Khera, CA

सुनवाई की तारीख/Date of Hearing : 28.08.2018

उद्घोषणा की तारीख/Date of Pronouncement: 26.11.2018

आदेश/Order

PER ANNAPURNA GUPTA, AM:

The present appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-3, Ludhiana (in short CIT(A)) dated 2.11.2017 passed u/s 250 (6) of the Income Tax Act, 1961 (in short referred to as ‘Act’).

2. Ground Nos.1 and 1.1 raised by the Revenue reads as under:

“1. Whether on the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) was justified in deleting the disallowance of Rs.24,56,693/- made by the Assessing Officer under section 14A of the Income Tax Act read with Rule 8D of the Income Tax Rules on the reasoning that no exempt income was earned in the relevant year ?

1.1 Whether on the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) was justified in deleting the disallowance of Rs.24,56,693/- made by the Assessing Officer under section 14A of the Income Tax Act particularly when the similar disallowance had been partly confirmed by the CIT(A) in the case of M/s Malwa Cotton & Spinning Mills Ltd. in AYS 2010-11, 2011-12 and 2012-13 ?

3. The issue raised in the above ground relates to the deletion of disallowance of expenses made by invoking provisions of section 14A of the Act.

4. Brief facts relating to the issue are that during assessment proceedings it was noticed that the assessee had made investment in the shares of Macro Dairy Venture (P) Ltd. amounting to Rs.6,50,33,600/- and it was also noticed that assessee had incurred interest expenditure of Rs.2,35,30,153/-. The assessee was asked to explain why interest expenditure relating to investment in Macro Dairy Venture (P) Ltd. (supra) not be disallowed by invoking the provisions u/s 14A read with Rule 8D of the Income Tax Rules, 1962. In response to the same, the assessee submitted its reply which was considered but not accepted by the A.O. not being satisfied with the correctness of the claim of the assessee that no expenditure had been made in relation to the income which did not form part of the total income under the Act for the impugned year. Therefore, disallowance of Rs.24,56,693/- was calculated and added to the total income of the assessee u/s 14A read with Rule 8D of the Rules.

5. The matter was carried in appeal before the CIT(A) who deleted the disallowance on finding that no dividend/exempt income had been earned during the year and following the decision of the Hon'ble Jurisdictional High Court in the case of CIT, Faridabad Vs. Lakhani Marketing Inc. (2014) 49 Taxmann.com 257, holding categorically that unless and until there is a receipt of exempted income for the concerned assessment years, section 14A cannot be invoked. The Ld.CIT(A) also noted that identical proposition had been laid down by the Hon'ble Delhi High Court in the case of CIT Vs. Holcim India (P) Ltd. (2015) 57 Taxmann.com 28, the Hon'ble Gujarat High Court in the case of Corrtch Energy (P) Ltd. (2014) 272 CTR 262 (Guj), the Hon'ble Allahabad High Court in the case of Shivam Motors (P) td. (2015) 272 CTR 277 (All), the Hon'ble Delhi High Court in the case of Cheminvest Ltd. (2015) 378 ITR 33(Del) and the Hon'ble Madras High Court in the case of Redington (India) Ltd. (2017) 392 ITR 633.

6. Before us the Ld. DR relied upon the order of the A.O. and stated that the claim of the assessee that it had incurred no expenditure for the purpose of making the impugned investment in shares of Macro Dairy Venture (P) Ltd. was unacceptable and further that as per CBDT Circular No.5 of 2014 it has been clarified that whether there is exempt income or not during the year, Rule 8D will be applied to the investment for working out disallowance u/s 14A of the Act.

7. The Ld. counsel for assessee, on the other hand, relied upon the order of the CIT(A), pointing out therefrom that the Hon'ble Jurisdictional High Court in the case of Lakhani Marketing Inc. (supra) had categorically held that where no exempt income has been earned no disallowance u/s 14A is warranted and further drawing our attention to the decision of the Hon'ble Madras High Court in the case of Redington (India) Ltd. (supra) which had been considered by the CIT(A) also at para 5.7 of her order, pointing out that the Hon'ble Court in the said decision had expressed its inability to subscribe to the view expressed in the aforesaid Circular of CBDT. The Ld. counsel for assessee pointed out that the Hon'ble Madras High Court had noted that the provisions of section 14A were inserted as a response to the judgments of the Hon'ble Supreme Court in the case of CIT Vs. Maharashtra Sugar Mills Ltd. (1971) 82 ITR 452 and Rajasthan State Warehousing Corporation Vs. CIT (2000) 242 ITR 450 in terms of which expenditure incurred by an assessee carrying on composite business giving rise to both taxable as well as non-taxable income was allowable in entirety without apportionment. It was thus that section 14A of the Act was inserted providing that no deduction would be allowable in respect of expenditure incurred in relation to earning of income exempt from taxation. The Hon'ble Madras High Court held that the provisions is clearly relatable to the earning of actual income and not notional or anticipated income. Therefore, the view propounded by the CBDT Circular that section 14A would be attracted even to exempt

income "includable" in total income was not acceptable. Our attention was drawn to the relevant findings of the CIT(A) at paras 4.7 and 4.8 as under:

"4.7 Recently the Hon'ble High Court of Madras in the case of Redington (India) Ltd. [2017] 392 ITR 633 expressed its inability to subscribe to the view expressed vide the aforesaid circular of the CBDT. Elaborating on the disapproval of the circular, it was stated that the provisions of section 14A were inserted as a response to the judgments of the Supreme Court in CIT Vs. Maharashtra Sugar Mills Ltd. [1971] 82 ITR 452 and Rajasthan State Warehousing Corporation Vs. CIT [2000] 242 ITR 450 in terms of which, expenditure incurred by an assessee carrying on a composite business giving rise to both taxable as well as non-taxable income, was allowable in entirety without apportionment. It was, thus, that section 14A was inserted providing that no deduction shall be allowable in respect of expenditure incurred in relation to the earning of income exempt from taxation. As observed by the Supreme Court in the judgment in the case of CIT Vs. Walfort Share & Stockbrokers (P) Ltd.[2010] 326 ITR 1:

"..... The mandate of s. 14A is clear. It desires to curb the practice to claim deduction of

expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income."

4.8 In view of the aforesaid, the Hon'ble Madras High Court held that the provision is clearly relatable to the earning of actual income and not notional or anticipated income. The view propounded by the CBDT circular to the effect that section 14A would be attracted even to exempt income "includable" in total income would entail the assessment of notional income, assumed to be exempt in the future, in the present Assessment Year, The computation of total income in terms of section 5 of the Act is on real income and there is no sanction in law for the assessment of admittedly notional income, particularly in the context of effecting a disallowance in connection therewith. The exemption extended to dividend income, it was held, would relate only to the previous year when the income was earned and none other and consequently the expenditure incurred in connection therewith should also be dealt with in the same previous year. Thus, by application of the matching concept, in a year where there is no exempt income, there cannot be a disallowance of expenditure in relation to such assumed income [Madras Industrial Investment Corporation Ltd. 225ITR 802,(SC)]. The Hon'ble Court, thereafter, held that language of section 14A should be read in that context and such that it advances the scheme of the Act rather than distort it and

concluded that the provisions of section 14A read with Rule 8D cannot be made applicable in a vacuum i.e. in the absence of exempt income.”

8. We have heard the rival contentions. We do not find any merit in this ground raised by the Revenue. The fact that no exempt income was earned by the assessee during the year from the impugned investments made in the shares of Macro Dairy Venture (P) Ltd. is not disputed. Moreover, as pointed out by the Ld. counsel for assessee it has been categorically held by various High Courts, as pointed out by the Ld. counsel for assessee above, that no disallowance u/s 14A of the Act is warranted when no exempt income is earned. More importantly, even the Hon'ble Jurisdictional High Court has held so in the case of Lakhani Marketing Inc. (supra). The Ld. DR has not brought to our notice any contrary decision either of the Hon'ble Jurisdictional High Court or of the Hon'ble Apex Court in this regard. Further the reliance placed by the Ld. DR on the CBDT Circular has been dealt with by the Hon'ble Madras High Court in the case of Redington (India) Ltd. (supra) categorically expressing its inability to subscribe to the view laid down in the said Circular, by pointing out that the provisions of section 14A of the Act were relatable to the earning of actual income and not notional or anticipated income since they were brought on the Statute to negate/nullify the decision of the Hon'ble Supreme Court in the case of Maharashtra Sugar Mills Ltd. (supra) and in Rajasthan State Warehousing Corporation (supra) wherein it was held that the expenses were to be allowed in entirety without apportionment

between taxable and non-taxable income. In view of the same, we find no merit in the pleadings of the Ld. DR and, therefore, reject the same. Ground Nos.1 and 1.1 raised by the Revenue are, therefore, dismissed.

9. Ground Nos.2, 2.1 and 2.2 raised by the Revenue relate to the issue of disallowance of interest expenses made under section 36(1)(iii) of the Act and read as under:

2. *Whether on the facts & circumstances of the case and in law, the Commissioner of Income Tax (Appeals) was justified in deleting the disallowance of Rs.1,33,11,998/- made by the Assessing Officer under section 36(l)(iii) of the Income-tax Act particularly when she has followed the decision of Hon'ble Punjab & Haryana High Court in the case of Abhishek Industries Ltd. 286 ITR 1 in many cases while confirming the disallowance of interest ?*
- 2.1 *Whether on the facts & circumstances of the case and in law, the Commissioner of Income Tax (Appeals) was justified in deleting the disallowance of Rs.1,33,11,998/- made by the Assessing Officer under section 36(l)(iii) of the Income-tax Act particularly when the said advances given to M/s Macro Dairy Venture Pvt. Ltd. were made out of composite funds including the borrowed funds ?*
- 2.2 *Whether on the facts & circumstances of the case and in law, the Commissioner of Income Tax (Appeals) was justified in deleting the disallowance of Rs.1,33,11,998/- made by the Assessing Officer under section 36(l)(iii) of the Income-tax Act particularly when the assessee failed to demonstrate the commercial expediency of advances were given to M/s Macro Dairy Venture Pvt. Ltd. out of composite funds including the borrowed funds deleting the disallowance of Rs.1,33,11,998/- made by the Assessing Officer under section 36(l)(iii) of the Income-tax Act particularly when the said advances given to M/s Macro Dairy Venture Pvt. Ltd. were made out of composite funds including the borrowed fund."*

10. Brief facts relating to the issue are that during assessment proceedings the Assessing Officer noted that the assessee had made interest free advances of

Rs.10,23,99,988/- to M/s Macro Dairy Ventures Pvt. Ltd. The assessee was show caused as to why the proportionate interest on the above said sum should not be disallowed. Due reply was filed by the assessee, which was not accepted by the Assessing Officer for the reason that the assessee had mixed funds, in the face of which as per the Assessing Officer, provisions of section 36(1)(iii) of the Act were applicable and further that nothing had been brought on record to show commercial expediency for making the said loans. The Assessing Officer further relied upon the judgment of Hon'ble Jurisdictional High Court in the case of CIT Vs. Abhishek Industries Ltd. 286 ITR 1 and disallowed the interest relating to the impugned advances @ 13%, which worked out to Rs.1,33,11,998/-.

11. Before the Ld.CIT (Appeals) the assessee reiterated its contentions that the advances had been made out of its own funds and further demonstrated the availability of the said funds also. The assessee also contended that the advances had been made out of business expediency since the assessee was holding shares in M/s Macro Dairy Ventures Pvt. Ltd. as business investment and since M/s Macro Dairy Ventures Pvt. Ltd. was incurring huge losses the said advances were made to it by the assessee. The assessee further contended that for the preceding year the I.T.A.T. had deleted identical disallowance of interest under section 36(1)(iii) of the Act on finding the availability of sufficient own funds with the assessee. The Ld.CIT (Appeals) finding

merit in the contention made by the assessee deleted the disallowance so made holding that the advances had been made out of commercial expediency and no borrowed funds had been used for giving these advances. The Ld.CIT (Appeals) further held that the claim of the assessee could not be denied merely on the assumption that it had diverted its borrowed funds for non business purpose. The relevant findings of the CIT (Appeals) at para 5.8 of her order are reproduced as under:

“5.8 In my considered opinion, there is considerable force in the claim of appellant that, the appellant company submitted that advances had been given out of commercial expediency and no specific borrowing had been made for giving these advances. The claim of the appellant cannot deny just for the assumption that the appellant had diverted his borrowed funds for non-business purpose. The Id. AO has not adduced any evidence on the contrary to negate the claim of appellant. In view of the above, I am inclined to agree with the contentions of the Id. A.R. Accordingly, disallowance of Rs.1,33,11,998/- u/s 36(1)(iii) of the Act on account of capital advance is ordered to be deleted. This ground of appeal is allowed.”

12. Before us the Ld. D.R. relied upon the order of the Assessing Officer contending that undeniably the funds available with the assessee were mixed funds and, therefore, the decision of the Hon'ble Jurisdictional High Court in the case of Abhishek Industries Ltd. (supra) was squarely applicable in the present case, which the Assessing Officer had rightly applied and made the impugned disallowance of interest expenses.

13. The Ld. counsel for the assessee, on the other hand, relied upon the order of the CIT (A). Further, the Ld. counsel for the assessee drew our attention to the factual

submissions made before the CIT (A) demonstrating the availability of own funds for the purpose of making the impugned business which were taken note of the CIT (A) also at para 5.4 of her order as under

“5.4 The appellant has vehemently contended that the appellant has applied its own interest free funds in advancing loan to M/s Macro Dairy Ventures Pvt . The appellant has filed detailed submission to explain its availability of interest free funds to evidence the availability of Non-interest bearing funds with the appellant. I have carefully considered assesses submission it is seen that from the FY 2007-08 to 2011-12, the appellant has in its possession sufficient interest free funds , to the tune of Rs.1349.73 lacs for financial year 2007-08, Rs.1498.08 lacs for financial year 2008-09, Rs. 1689.64 lacs for financial year 2009-2010, Rs.2111.67 Lacs for FY 2010-11 and Rs. 2329.74 lacs for the FY 2011-12 relevant to the Assessment Year 2012-13 under appeal. The amount advanced by the appellant to M/s. Macro Dairy Ventures Pvt. Ltd. is just Rs. 1023.99 Lacs only, which is just 43.95 % of the interest free funds available with the appellant as on 31.03.2012. Therefore it is evident that, the presumption of AO , that the borrowed funds were used for making the payment to M/s Macro Dairy Ventures Pvt. Ltd. by the appellant company is without basis and the invocation of provisions of Section 36(1)(iii)of Income Tax Act, 1961 is not justified. I am satisfied with the contention of appellant that , no borrowed funds were used for making advances to M/s Macro Dairy Ventures Pvt. Ltd. Since the assessee company has demonstrated effectively that sufficient interest free funds were lying with it at its discretion and further explained her that a part of the amount advanced was already advanced during the FY 2010-11 relevant to the AY 2011-12 and the amount left with M/s Macro Dairy Venture Pvt. Ltd after allotment of shares was given as advance to it along with further funds. This fact is evident from the audited Balance Sheet of the company as at 31.03.2012. the assessee has also reiterated that , the payments made to M/s. Macro Dairy Ventures Pvt. Ltd. have been made for the purpose of business of the assessee, since the assessee is holding equity shares in this company as business investment and therefore , the payments made to this company were not a diversion in the matter of investments of surplus funds and the provisions of Section 36(1)(iii) of IT. Act, 1961 arc not applicable.”

14. The Ld. counsel for the assessee further drew our at to the findings of the CIT (A) that the Assessing Officer had

failed to prove that the interest bearing funds had been diverted for making the impugned advances as under:

“It is noticed that the A.O. had miserably failed to discharge his onus and failed to prove that part of interest bearing fund was diverted as non interest bearing funds. Thus, advances made are much below the interest free funds available with the appellant in the form of capital and reserves and surplus. It is held by Hon'ble Mumbai High Court in Reliance Utilities and Power Ltd. 313 ITR 340 that if funds are available, both interest free and interest bearing, then a pre assumption arise that investments are made out of interest bearing funds generated or available with the assessee. If the interest free funds were sufficient to meet investment, no disallowance of interest is warranted. Respectfully, following the ratio of Hon'ble Mumbai high court decision in the case of Reliance utilities & Power Ltd. I am inclined to agree with the contentions of the ld A.R

15. Thereafter the Ld. counsel for the assessee pointed out from the submissions made before Ld.CIT (A) that identical disallowance made in the preceding year i.e. assessment year 2010-11, had been deleted by the I.T.A.T. on finding the availability of sufficient own funds for making the impugned advances as under:

“e) It is important to bring to your kind notice that the Hon'ble ITAT Delhi Bench E New Delhi vide its order in ITA No. 1689/Del/2013/AY 2008-09 and ITA No.6260/Del/2013/AY 2010-11 in cases of DC/7 Circle-6(1) New Delhi vs. M/s. Majestic Hotels Ltd. and M/s. Majestic Hotels Ltd. vs. Addl. CIT Range-6 New Delhi (copy enclosed) has categorically given its finding that the appellant assessee having own adequate sufficient interest free funds at its disposal and has decided in favor of the appellant and has deleted the addition of interest disallowance amounting to Rs.24,05,433/- for the assessment year 2008-2009 and Rs.29,63,872/- for the assessment year 2010-2011 made by the Ld. Predecessor Assessing Officers of the appellant.”

16. The Ld. counsel for the assessee, therefore, stated that the Ld.CIT (A) had rightly deleted the disallowance of interest made, on account of availability of sufficient own funds having been demonstrated by the assessee for making

the impugned advances. The Ld. counsel for the assessee further pointed out that the commercial expediency for making the impugned advances had been demonstrated to the CIT (A) by pointing out that the investment in M/s Macro Dairy Ventures Pvt. Ltd. was a business investment and since M/s Macro Dairy Ventures Pvt. Ltd. was incurring losses the impugned advance was made to provide financial stability to it. Our attention was drawn to the relevant submissions made in this regard as reproduced in the order of the CIT (A) also as under:

"It is further pointed out that the payments made to M/s Macro Dairy Ventures Pvt. Ltd. as mentioned above have been made for the purpose of business of the assessee, since the assessee is holding equity shares in the company as business investment and therefore the assessee clarifies that the payments made to this company were not a diversion in the matter of investments of surplus funds and the provisions of Section 36(1)(iii) of IT. Act, 1961 are not attracted even to the investment.

It is further clarified that the transfer of funds to the company was made by the assessee keeping in view the commercial expediency and not with a view of earning profits on this amount, which is very much a prerogative of a prudent assessee though M/s. Macro Dairy Ventures Pvt. Ltd. is a sister concern of the assessee.

Regarding the amount advanced to M/s. Macro Dairy Ventures Pvt. Ltd. it is further brought to your kind notice that the company at the moment is incurring heavy losses and it is a sister concern of the assessee, the reference in this regard may kindly be made to the Income Tax records of the company, the case of which is under scrutiny assessment before your good self for the A.Y.2012-13 and in view of huge losses, the interest on this amount was not charged by the assessee."

17. The Ld. counsel for the assessee, therefore, stated that in the light of above facts the CIT (A) had rightly held that even the commercial expediency for making advances had been established by the assessee and had, therefore, rightly

deleted the disallowance made under section 36(1)(iii) of the Act.

18. We have heard the rival contentions and perused the orders of the authorities below. We do not find any merit in the contention of the Ld. D.R. The contention and the basis of the Ld. D.R. for supporting the disallowance of interest under section 36(1)(iii) of the Act in the present case, we find, has been duly considered and dealt with by the Ld.CIT (A) while deleting the same. The only reason for making the disallowance, we find, is the availability of mixed funds with the assessee, to which fact the decision of the Hon'ble Jurisdictional High Court in the case of Abhishek Industries Ltd. (supra) has been applied and disallowance of interest made by the AO. This contention, we find has been duly addressed by the Ld. counsel for the assessee by recording a finding of fact that sufficient own funds were available with the assessee in the preceding years when part of the advances was made and even in the impugned year when the remaining advance was made. The factual finding of the Ld.CIT (A) have not been controverted by the Revenue. Further the Ld.CIT (A) has rightly followed the decision of the Hon'ble Mumbai Court in the case of Reliance Utilities & Power Limited, 313 ITR 340 to hold that where sufficient own funds are available no disallowance under section 36(1)(iii) of the Act is warranted which proposition we find has been reaffirmed by the Hon'ble Jurisdictional High Court in the case of Bright Enterprises Pvt. Ltd. Vs. CIT,

Jalandhar, 381 ITR 107. Further even the I.T.A.T. in the case of the assessee itself for assessment year 2010-11 had deleted the disallowance of interest made on account of advances given on finding the availability of sufficient own funds with the assessee. Even otherwise, we find that the assessee had demonstrated the commercial expediency also for making the impugned advances. The contention of the assessee was that the investment made in M/s Macro Dairy Venture Pvt. Ltd. was a business investment and since M/s Macro Dairy Venture Pvt. Ltd. was incurring huge losses the said advances were required to be made to it to tide over its financial difficulties. These facts have not been controverted by the Revenue. Therefore, when the assessee had made business investment in M/s Macro Dairy Venture Pvt. Ltd. and the said company incurred losses, the advances made by the assessee to enable M/s Macro Dairy Venture Pvt. Ltd. to tide over its financial difficulties can safely be said to be commercial advances since it is directly linked to safeguarding the business investment made by the assessee in the said company. Finding of the CIT (A), therefore, that even the commercial expediency of the said advance had been established by the assessee is, we hold correct. In the light of the above we concur with the Ld.CIT (A) that the commercial expediency of the advances having been demonstrated and also the availability of sufficient own funds for making the impugned advances, there was no reason or occasion to warrant any disallowance of interest under section 36(1)(iii) of the Act. The order of Ld.CIT (A) on

this account, in deleting the disallowance of interest amounting to Rs.1,33,11,998/- is, therefore, upheld. Ground Nos.2, 2.1 and 2.2 raised by the Revenue are dismissed.

19. Ground Nos.3 and 3.1 raised by the Revenue reads as under:

“3. Whether on the facts and circumstances of the case the Commissioner of Income Tax (Appeals) was justified in deleting the disallowance of Rs.1,00,000/- made by the Assessing Officer out of club expenses particularly when the assessee failed to demonstrate the commercial expediency of such expenditure when it runs a very high standard hotel at its place of business ?

3.1 Whether on the facts & circumstances of the case and in law, the Commissioner of Income Tax (Appeals) was justified in deleting the disallowance of Rs.1,00,000/- made by the Assessing Officer out of club expenses particularly when no material was brought on the appellate/assessment records to demonstrate the veracity of such expenditure wholly and exclusively for business purposes ?”

20. In the aforesaid grounds the Revenue has challenged the deletion by the CIT(A) of disallowance of club expenses claimed by the assessee.

21. The brief facts relevant to the same are that the A.O. had disallowed a sum of Rs.1 lac claimed by the assessee on account of club membership of Sutlej Club holding that no business activity emerged from the said expenses. The Ld.CIT(A) deleted the said disallowance on finding that the membership was taken in the name of senior executives of the assessee company for the purpose of its business, as the club was not offering corporate membership in the name of the company to which effect a certificate had also been filed by the assessee from the club. The Ld.CIT(A), therefore, held

that the membership of the club had been taken for business purpose. The Ld.CIT(A) further noted that identical disallowance made in the case of assessee in assessment year 2010-11 had been deleted by the I.T.A.T. in its order in ITA No.6260/Del/2013.

22. Before us, the Ld. DR relied upon the order of the A.O., while the Ld. counsel for assessee relied upon the order of the CIT(A). The Ld. counsel for assessee further drew our attention to the submissions made before the CIT(A) on payment made to Sutlej club before the CIT(A) drawing our attention to the same as reproduced at page 20 of the order which is reproduced as under:

b) During the course of assessment proceedings, vide its letter dated 17/03/2015(copy enclosed), the assessee has made following submissions on the issue:

"Regarding the payment of Satluj Club amounting to Rs. 1,00,000/-, the assessee respectfully submits that the payment for membership of the club was subscribed to in the FY 2005-2006 for senior executive of the company. The executives entitled included:

- a) General Management Operations.*
- b) General Manager Finance*
- c) Finance Controller*
- d) Food & Beverage Controller*
- e) Executive Chef*
- f) Executive House Keeper*
- g) Front Office Manager*
- h) Chief Executive Officer*

"Sutlej Club is the prominent club in the city, akin to Delhi Gymkhana Club or Chelmsford Club in New Delhi. Almost all the leading citizens of Ludhiana are members. The reason for obtaining the membership was that the senior executives would be interacting with patrons, prominent business men, senior executives in public and private sector in more informal environs as against the formal hotel setting. Informal exchange of views with

people who matter are considered good for goodwill and business relations as also for the patterns. Thus, the expenditure of Rs.1,00,000/- was made for improving the business relations and to increase the business of the hotel to fight out the cut throat competition in the market conditions of Ludhiana where a number of star rated hotels have come up in the recent past. It is therefore, very humbly submitted that no adverse inference in the matter may kindly be made."

it was pointed out therefrom that the membership was subscribed for financial year 2005-06 for senior executives of the company which included a number of officers as listed above and Sutlej club being a prominent club in the city, the membership was taken so that the senior executives would interact with patrons, prominent business men, senior executives in public and private sector in more informal environments and thus develop goodwill and business relation for the assessee. It was also pointed out that identical disallowance made in assessment year 2010-11 in the case of the assessee was deleted by the I.T.A.T. vide its order dated 6.11.2015.

23. We have heard the rival contentions and perused the orders of the authorities below. We do not find any merit in the present grounds raised before us. The fact that the membership was subscribed for in assessment year 2005-06 for senior executives of the company so as to enable them to interact with prominent business men and senior executives, has not been controverted by the Revenue. Further it is not disputed that identical disallowance made in assessment year 2010-11 had been deleted by the I.T.A.T. The Ld. DR has failed to point out any distinguishing fact from assessment year 2010-11 to us. In view of the same, we see

no reason why the said decision will not apply in the present case also. More so, for the reason that the assessee having established that the membership was taken to facilitate the senior executives of the company to meet prominent persons in informal environment for developing better business relations and for promoting goodwill of the assessee company. In view of the same, we uphold the order of the CIT(A) in holding the club membership expenses to be in the nature of business expenses and hence allowable under section 37(1) of the Act. The ground of appeal Nos.3 & 3.1 raised by the Revenue are, therefore, dismissed.

24. In effect, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court.

Sd/-
संजय गर्ग
(SANJAY GARG)
न्यायकि सदस्य/ Judicial Member
दिनांक /Dated: 26th November, 2018
रती

Sd/-
अन्नपूर्णा गुप्ता
(ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar