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| IN THE INCOME TAX APPELLATE TRIBUNAL |
| COCHIN BENCH, COCHIN |
| BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM |

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| I.T.A. No.139/Coch/2017 |
| Assessment Year : 2007-08 |

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| M/s. Trivandrum Club, TC 15/82910, Vazhuthakkad, Trivandrum-695 010. [PAN:AAEAT 0337Q] | Vs. | The Assistant Director of Income- tax(Exemptions), Trivandrum. |
| (Assessee-Appellant) | | (Revenue-Respondent) |

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| Assessee by | Rajeev R. CA |
| Revenue by | Smt. A.S. Bindhu, Sr. DR |

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| Date of hearing | 04/03/2019 |
| Date of pronouncement | 04/03/2019 |

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A), Trivandrum dated 14/02/2017 and pertain to the assessment year 2007-08.

2. The assessee has raised the following grounds of appeal:

1. The CIT(A) erred in confirming the action of the Asst. Director of Income-tax(Exemptions), Trivandrum (assessment order passed on 28/12/2009) by restricting the claim for indirect expenses relating to the Subramaniam Hall (i.e. expenses relatable to income from non members) to 10% instead of in the ratio of events conducted by members and non members.

2. The Id. CIT(A) ought to have noted that in the consolidated order for the assessment years 2002-03, 2004-05 and 2005-06 in ITA Nos. 64T/65T.66T/07-08 dated 27/02/2008, the then Commissioner of Income-tax(Appeals) has clearly laid down the manner of identification of direct expenses, indirect expenses and common expenses and that the assessee has followed the same basis for computation of income till the AY 2018-19. Moreover, the assessments upto the AY 2016-17 has been completed by accepting the computation made in the lines as per order of the Commissioner of Income-tax(Appeals) in ITA Nos.64T/65T.66T/07-08 dated 27/02/2008 (except for the AY 2007-08 and 2008-09) and hence the order of the Assessing Officer needs to be quashed/set aside.

2.1 The crux of the above grounds is with regard to disallowance of common expenses.

3. The facts of the case are that the assessee had classified the common expenses at Rs.1,26,46,885.35/-. The Assessing Officer in addition to this, took Rs.27,30,175.89 and totaled it and allowed 10% of the expenses at Rs.15,37,706/-.

4. The assessee carried the matter in appeal before the CIT(A). The CIT(A) confirmed the disallowance by observing that 10% would be sufficient enough to allow since substantial part of the common expenses has nothing to do with the services rendered to the non members. Common expenses which are otherwise disallowed seems to have least nexus to the receipts from non members. According to the CIT(A) expenses like salary, allowance, staff welfare, staff food, professional charges etc. had to be met out by the assessee club even in the absence of receipt from non-members. The CIT(A) observed that the individuals to whom salary etc. were paid were doing nothing much to the non-members either when they enter

into the club or when they avail the facilities including hall etc. available in the club premises and these individuals do more services to the members than non members. Allowing 10% deduction against the actual claim of deduction made, definitely would compensate the kind of service extended to the non members and accordingly, he was of the view that the AO was justified in disallowing 90% of the expenses. The CIT(A) sustained the business income amounting to Rs.6,91,040/-.

4. The contention of the Ld. AR is that the AO included the other indirect expenses at Rs.27,30,175.89/- in the common expenses for computing disallowance which is incorrect. According to him, only the common expenses of Rs.1,26,46,885.35/- is to be considered as disallowance and inclusion of indirect expenses is incorrect.

5. The Ld. DR relied on the order of the CIT(A).

6. We have heard the rival submissions and perused the record. Before the CIT(A), the assessee has not challenged the inclusion of indirect expenses of Rs.27,30,175.89/- along with the common expenses so as to disallow it at 10%. As such, the argument of the Ld. AR is not emanating from the order of the CIT(A). Hence, at this stage, we are not in a position to consider the same. Accordingly, we confirm the order of the CIT(A) on this issue. This ground of appeal of the assessee is dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on this 04th March, 2019

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 04th March, 2019

GJ

Copy to:

1. M/s. Trivandrum Club, TC 15/82910, Vazhuthakkad, Trivandrum-695 010.
2. The Assistant Director of Income-tax(Exemptions), Trivandrum.
3. The Commissioner of Income-tax(Appeals), Trivandrum.
6. The Pr. Commissioner of Income-tax, Trivandrum.
7. D.R., I.T.A.T., Cochin Bench, Cochin.
8. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin