

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.609/Ahd/2016
(Assessment Year : 2012-13)

Giriraj Iron Ltd.,
14, Vanshree Bunglows,
Nr. Udgam School,
Opp. Sal Hospital,
Drive in Road, Thaltej
Ahmedabad – 380 054.

Vs. DCIT,
Circle – 2(1)(1),
Navjivan Trust Building,
Ahmedabad – 380 009.

[PAN No. AAECG 2514 N]

(Appellant)

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(Respondent)

Appellant by : Shri Hardik Vora, A.R.

Respondent by : Shri S. K. Dev, Sr. D.R.

Date of Hearing 27.03.2019

Date of Pronouncement 17.05.2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 29.01.2016 passed by the Commissioner of Income Tax (Appeals)-2, Ahmedabad under section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’) arising out of the order dated 28.02.2015 passed by the Deputy Commissioner of Income Tax, Circle – 2(1)(1), Ahmedabad for the Assessment Year 2012-13.

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2. **Ground No.1:** During the course of assessment proceeding, it was noticed by the Learned Assessing Officer that the assessee had given an advance of Rs.10,00,000/- to one Shri Sanjay K Shah. The assessee was asked to furnish clarification as to whether interest bearing funds was diverted under the said advance or for non-business purposes or for acquisition of capital assets. Further that, the explanation as to why proportionate interest expenses should not be disallowed u/s 36(1)(iii) of the Income Tax Act or should be capitalized with the capital assets was also sought for. In reply whereof, the assessee stated that the advance given to said Shri Shah was from interest bearing fund and interest was charged in the A.Y. 2013-14. The assessee has not given any clarification whether interest was charged for A.Y. 2012-13 or not and if not then why. Further that, no evidence of business expediency or any evidences generating income from such loans and advances given to Shri Sanjay K Shah or any justification or evidences that the loans and/or advances were given out of surplus funds and no interest bearing funds were diverted for interest free loans and advances given was furnished by the assessee. Ultimately, applying the provision of Section 36(1)(iii) of the Act on the amount of interest free loans and advances @12% totaling to Rs.1,20,000/- was charged and disallowed which was in turn restricted interest to 9% totaling Rs.90,000/- by the Learned CIT(A). Hence the instant appeal before us.

3. At the time of hearing of the instant appeal, the Learned Counsel appearing for the assessee submitted before us that by and under a letter dated 16.07.2015 the assessee submitted the following before the first appellate authority:

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“(3) Disallowance of interest u/s 36(1)(iii) of Rs.1,20,000/- :-

The company has given loan of Rs.10,00,000/- to Sanjay K. Shah - Mumbai. During F.Y.2011-12 company has not received interest on this advance. However, advances of Rs.10,00,000/- alongwith interest of Rs. 1,50,000/- was received in F.Y.2012-13.

The learned A.O. has disallowed interest u/s.36(1)(iii) for interest free advances given to Sanjay K. Shah. Accordingly, interest @12% P.a. On Rs.10,00,000/- i.e. Rs.1,20,000/- is disallowed out of total interest claimed by the company.

In this context it was stated by the company that Sanjay K. Shah is broker of Iron and Steel items. This person has done business with company as a broker of Iron and Steel items for Mumbai branch of the company. In F.Y.2012-13 advances are received back alongwith interest of Rs.1,50,000/-. We submit herewith ledger account of Sanjay K. Shah for F.Y. 2011-12 and 2012-13. In F.Y. 2011-12, company has not charged interest as he was working with company as a broker. The total interest of Rs. 1,50,000/- received in F. Y.2012-13, consist interest for F. Y. 2011-12. Company has shown interest income in F.Y.2012-13. Hence, company has not understated its income. The rate of taxation in both year are same and there is no loss to the Government exchequer.

Sometimes in business it happens that terms of transactions are not defined precisely in particular year. Looking to the business volume of the company and taxable income, such minor lapses may occur which should be condoned by the Income Tax Department. In this case, total interest income received from Sanjay K. Shah is offered in F.Y.2012-13. The possible reason may be, he may be following cash system of accounting as he is having brokerage income.

In view of above facts, as interest is accounted in F. Y.2012-13, we request your honour to delete disallowances of interest of Rs. 1,20,000/-.”

Further that, on 30.10.2015 assessee made a further submission along with a certain documents in the manner as follows upon considering which the Learned CIT(A) restricted the disallowance:

“(1) Dis-allowance of Interest u/s. 36(1)(iii) of Rs. 1,20,000/-:

The company has given loan of Rs.10,00,000/- to Sanjay K. Shah - Mumbai. During F.Y. 2011-12 company has not received interest on this advance.

The learned A. O. has dis-allowed interest u/s. 36(1)(iii) for interest free advances given to Sanjay K. Shah. Accordingly, interest @12% P.a. On Rs.10,00,000/- i.e. Rs.1,20,000/- is dis-allowed out of total interest claimed by the company.

Shri Sanjay K. Shah is Broker of Iron & Steel Items and has done business with company as a Broker for Mumbai Branch of the company. In F.Y. 2012-13 advances are received back alongwith Interest of Rs. 1,50,000/-. The company has shown interest income of Rs. 1,50,000/- in F.Y. 2012-2013. We have stated that rate of taxation for company for both years are same and there is no loss to the Government exchequer. We have submitted ledger accounts of Sanjay K. Shah for F.Y. 11-12 and F. Y. 2012-13 and Interest Income account of the company for F. Y. 2012-2013 (Page No.1 to 3 of our submission dated 16/07/2015). Further we submit following documents for your kind perusal:-

- 1. Profit & Loss Account for F. Y. 2011-2012 and F. Y. 2012-2013 of the company.*
- 2. Copy of Income Tax Return alongwith Statement of Total Income for F.Y. 2011-12 & 2012-2013.*

As applicable rate of taxation for company in both year are similar, there is no evasion of tax. We request Your Honour to delete disallowance of Rs.1,20,000/- as company has already offered income in F.Y. 2012-13.”

- 4. We have heard the respective parties, and perused the relevant materials available on record. It appears from the record that the Learned CIT(A) was of the view that no details and/or evidences was submitted by the assessee to prove that the loans and advances were given out of the surplus funds and no interest bearing funds were diverted for interest free loans and advances. It was further noticed that the advances of Rs.10,00,000/- to Shri Sanjay K Shah has shown as opening balance as on 01.04.2011 meaning thereby that the advances was given in F.Y. 2010-11 or earlier to that. So far as the charging of interest*

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to the tune of Rs.1,50,000/- is concerned it has not given any working of the interest about the period to which the same was pertaining. Since the repayment of the loan of Rs.10,00,000/- has been made on 08.11.2012 followed by another Rs.5,00,000/- on 13.12.2012 it is not ascertainable at what rate of interest has been charged by the appellant and this interest was pertaining to F.Y. 2012-13, not to the year under consideration and earlier years. Furthermore, the AO's finding that the interest bearing funds have been utilized for the purpose of granting the interest free advances has not been controverted by the appellant. However, since the appellant has charged the interest of Rs.21,38,840/- on the loans given to the other party namely Giriraj Exim Pvt. Ltd. @ 9%, no justification has been found in working out interest @ 12% as done by the Learned AO which has been restricted by the Learned CIT(A) @ 9% resulting interest disallowance to the tune of Rs.90,000/-. We find no infirmity in the justification rendered by the Learned CIT(A) in restricting the interest disallowance @9% instead of deleting the same in the absence of any denial by the assessee that interest bearing funds have not been utilized for the purpose of granting the interest free advances.

5. **Ground No.2:** During the course of assessment proceeding, it was noticed that the assessee had paid club membership fees of Rs.6,61,800/- for availing membership from Karnavati Club Ltd. in the name of director namely Utkarsh Shaileshbhai Shah which has been claimed to have been paid by Cheque No.400311 of YES Bank dated 12.08.2011. The clarification was also made by the Learned AO that such membership was done for business purpose and to render good hospitality to the clients of the company. However, there

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was no proof of relevant evidences that such prospective clients or customers visited the club with the assessee during the whole of the year and what was the impact of such business meeting/conferences with such person on the profitability or the turnover of the assessee. Neither the ledger print of the Karnavati Club during the whole of the year regarding booking accommodation along with relevant receipt was submitted by the assessee and thus the expenditure incurred for the purpose of club membership could not be verified by the Learned AO. Neither the assessee proved that such expenses incurred wholly and exclusively for the purpose of business or in connection with the business activity of the assessee. Hence, such club membership fees to the tune of Rs.6,61,800/- was added to the income of the assessee which was in turn confirmed by the Learned CIT(A). Hence, the instant appeal before us.

6. At the time of hearing of the instant appeal, the Learned Advocate appearing for the assessee submitted before us that the issue relating to the Club membership fees in the name of the directors in the similar facts and circumstances of the case as already been settled a number of judgments by different Courts of law including the impugned Bench Tribunal in the matter of DCIT-vs-M/s. Banc of America Securities (India) Pvt. Ltd. in ITA No.6611/Mum/2008 as well as in the matter of Reliable Cigarette & Tobacco-vs-DCIT and also in the matter of Deep – raj Minerals-vs-ACIT in ITA No.6563/Mum/2007 in that view of the matter the order passed by the authorities below is not sustainable in the eye of law. On the contrary, the Learned DR relied upon the order passed by the authorities below.

7. We have heard the respective parties, and perused the relevant materials available on record. It appears that while rejecting the appeal of the assessee, the Learned CIT(A) observed as follows:

4.4 On the other side, the appellant submitted that the payment has been made from the bank account of the company and the company has incurred the expenditure for its business purpose. Since the membership has been purchased in the name of the individual director who represents for and on behalf of the company and its board of directors. It was also mentioned that it has entertained the officials and marketing staff of the customers and suppliers come to Ahmedabad frequently as the club offers concessional rates for lodging and boarding to card holders. Therefore, the business expenditure was incurred for promote the business. In support, it has relied upon various judgments.

4.5 Having considered the facts and submission, it is noticed that the membership has been taken in the name of the individual Shri Utkarsh S. Shah and his family members under the children category. Thus, it cannot be said to be the corporate membership in the club. Merely the payment has been made out of the funds of the appellant company would not change the nature of the membership. During the course of assessment proceedings and appellate proceedings the appellant has not been able to prove that the club facilities including lodging and boarding have been utilized by the appellant for the purpose of its customers or suppliers or for arranging some seminar/workshop etc. On going through the Karnavati Club expenditures ledger account, it was noticed that in the year under consideration no expenditures towards any boarding/lodging have been incurred in this regard. Further in the subsequent year i.e. F.Y. 2013-14, the total expenditures on 5 different dates were totaling to Rs.670/- only apart from the annual membership fee. Similarly, in F.Y. 2014-15, the expenditures were only to the tune of Rs.1,120/- at 10 different dates excluding the annual membership fee. From such a low amount of expenditures, it is apparent that those were certainly not having incurred for the purpose of customers/suppliers and were in the nature of personal expenditures. It would not be possible to entertain the guests in such a small amount in this costlier club of the city. Thus, the appellant has totally failed to prove the utilization of the club facilities for the purpose of business. Even during these three years the appellant has not booked a single room to prove that the same have been utilized for the purpose of business. Although in the present appellate proceedings the appellant submitted the name and designation of the person

and the company to which that person was belong were submitted but these details were not verifiable. Neither the person who visited nor the company to which the said person belongs has been established with the necessary evidences. Moreover it is needless to mention that in such a small amount of expenditure claimed these persons were impossible to be entertained and hence the authenticity of the details are in doubt.

4.6 With regard to the case laws cited by the appellant, it is noticed that those are not identical to the facts of the appellant's case. For example in the case of DCIT Vs. M/s.Banc of America Securities India Pvt. Ltd. the issue was in respect to decide whether the club member ship fee has to be treated as capital expenditure or revenue expenditure. While in the instant case the issue was whether the expenditure was in relation to business purpose or not. Undisputedly the use of the club facilities for the purpose of business was not the objection of the AO in the aforesaid cited case which was the moot question in appellant's case.

Likewise in the case of Deep Raj Minerals Vs. ACIT there was the undisputed fact that the appellant has taken the customers of the said firm to the club for business purposes and therefore the Hon'ble ITAT hold that once commercial angle is established then there is difference in the corporate membership or a membership of working partner in a club. However, in the appellant's case the appellant has totally failed to prove that the club facilities have been utilized by the appellant for its customers Likewise the facts of the case of Reliable Cigarettes and Tobacco Co. was also not relevant for the purpose that the said decision was based upon the judgement of Mumbai High Court in the case of OTIS Elevators India Ltd. Vs. CIT 195 ITR 682 whereby the business expenditures not falling within the mischief of Section 40(a)(v) and the payment has been allowed. The issue involved in the above cited case of Otis Elevators India Ltd. (supra) was in respect of to treat the club member ship fee as perquisite in the hands of the directors or allowed as business expenditure which was not the issue under consideration in the instant appeal. But in the instant case the issue of allowability of the business expenditures was u/s.37(l) of the Act and the provisions of Section 40(a)(v) were not in existence in the year under consideration.

*4.7 In view of the aforesaid discussion, the disallowance of the claim of expenditure made by the appellant as revenue and business expenditure is found not correct and hence the same is **confirmed**. Thus the ground of appeal is **dismissed**.”*

We have also considered the judgment passed by the Learned Tribunal as relied upon by the Learned AR. It appears from the records that the assessee made a written submission on 16.07.2015 before the first appellate authority with the following conditions:

“(4) Dis-allowance of Club Membership Fees :-

The company has paid Rs.6,61,800/- to Karnavati Club Limited by Cheque No. 400311 of YES Bank Ltd on 12.08.2011. The payment was made from company's bank account and Club Membership is taken in the name of director, Shri Utkarsh Shailesh Shah.

The learned A.O. has dis-allowed Club Membership Fees of Rs.6,61,800/- on following assumptions/reasons :-

- * Club has issued receipt in the name of Director Shri Utkarsh Shailesh Shah*
- * Membership mentioned in the receipt is "Children category".*
- * As Membership is taken in "Children category", it is taken for personal purpose of director and their family member. Assessee has to prove with relevant evidences that which client or customer visited the Club during the year and its impact of such business meeting on profitability and turn-over of the company.*
- * The company has not given ledger print out of Karnavati Club Ltd & details of booking accommodation with relevant receipt.*
- * In the absence of any evidences, such expenditure cannot be held to have been incurred wholly and exclusively for business purpose. Therefore, it is treated for personal purpose and dis-allowed.*

The contention of the learned A.O. to dis-allow Club Membership Fees of Rs. 6,61,800/- is totally incorrect, looking to the following facts.

- * The company has made payment by way of Cheque No. 400311 of YES Bank Ltd dated 12.08.2011. Payment is made from company's Bank*

account. Company has incurred the expenditure for its business purpose. We submit herewith Bank Register, ledger account, and payment receipt from Karnavati Club Ltd. As company has incurred expenditure, it is allowable as deduction.

- * Karnavati Club Ltd has issued receipt in the name of the director Shree Utkarsh Shailesh Shah for payment made by the company. Director Shree Utkarsh Shailesh Shah looks after marketing of the company's business. Any one director has to represent for & on behalf of the company and its Board of Directors. A company is "Artificial Judicial Person" and for voting right in Club election, one director is require to represent the company. Due to this circumstances, membership card is ' issued by Karnavati Club Ltd in the name of one of the director. Proof regarding directorship of Shree Utkarsh Shailesh Shah is submitted herewith.*
- * Karnavati Club is situated at Sarkhej-Gandhinagar Highway and Company's Registered Office is situated at Drive-in-Road, Thaltej, Ahmedabad. The approximate distance of club from registered office is around 3 km. Company is doing business in entire Gujarat and out of Gujarat also. The purchase are from Big companies like Jindal, Steel Authority Of India Ltd. (SAIL) and other companies. The officials and marketing staff of the customer and suppliers comes to Ahmedabad frequently. All business meetings and conference with the clients are held at Karnavati Club. The club offers concessional rate for lodging and boarding to cardholders. Looking to the above advantage available to company it has purchased membership with Karnavati Club. This is purely for business purpose and it is for good hospitality to the clients of the company. The company's turnover is increasing significantly. Hence such type of business expenditure is essential, to promote the business.*
- * The company has taken advantage of Karnavati Club Ltd during F.Y. 2013-14 & F.Y. 2014-15 for its customers/clients. We have submitted expense ledger account to the learned A. O. vide our submission dated 27.02.2015, same are submitted for your kind perusal. This demonstrate that company is utilising accomodation of Karnavati Chib Ltd for its client.*

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* *We rely on following case laws where in it is held by various authority that subscription fees of club paid by the company is allowable as business expenditure.”*

We have also carefully considered the order passed by the Learned Tribunal in the case of DCIT-vs-M/s. Banc of America Securities (India) Pvt. Ltd. The relevant portion whereof is as follows:

“As mentioned in para 5.3 in the case of Samtel Colour Ltd. Supra, we are of the view that admission fees paid towards corporate membership of the club is an expenditure incurred wholly and exclusively for the purpose of business and not towards capital account as it only facilitates smooth and sufficient running of a business enterprise and does not add to the profit earning apparatus of a business enterprise and accordingly we are inclined to uphold the finding of the ld. CIT(A) in deleting the disallowance of Rs. 16.00 lacs made by the Assessing officers. The ground taken by the revenue are, therefore, rejected.”

We have also carefully considered the order in the case of Reliable Cigarette & Tobacco-vs-DCIT following the decision passed in the matter of Otis Elevators (India)-vs-CIT reported in (1992) 195 ITS 682 (Bom) wherein it was also held that club fees is allowable expenditure as membership of club provides the directors and the executives better contact with person in good position and serves the assessee's business interests.

Further that, we have also carefully considered the order in the case of in the case of Deep – raj Minerals-vs- ACIT on the same issue. The relevant portion whereof is as follows.

"Further also, we find that the name appearing in the records of the club or for that matter contents of any documentation, is not the determining factor and what is important is who incurred the expenditure, from whose account the money is spent and for what purpose it is spent. There can be many

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reasons for Sri Rajesh D Shah to have a membership in his name and not in the name of the firm. As seen from para 4.5 of the impugned order that it is a undisputed fact that the assessee has taken the customer of firm to the club for business purpose. Once commercial angle is established, we do not find any difference in the corporate membership or a membership of working partner in a club, hi these circumstances, the failure to incur expenditure in the instant year does not make any difference. In principle, the Bombay High Court judgment in the case of Otis Elevators Co (India) Ltd (Supra) hold relevant for the instant issue too. Accordingly, Second issue raised by the assessee is allowed.”

Taking into consideration the entire facts of the matter, the case made out by the assessee and the judgment relied upon as discussed above, we find that such club membership fees is allowable as an expenditure particularly the ratio laid down on the basis of the given facts in the matter of Deep-raj Minerals which is identical to the facts of the instant case in hand. In that view of the matter relying upon the same, we find no justification in making disallowance of such expenditure. Hence, the addition made by the authorities below is hereby deleted.

8. In the result assessee’s appeal is allowed.

This Order pronounced in Open Court on

17/05/2019

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT
Ahmedabad; Dated 17/05/2019
Priti Yadav, Sr.PS

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-2, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad