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

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI A. K. GARODIA, ACCOUNTANT MEMBER

ITA No.2963/Bang/2018
Assessment year : 2013-14

Deputy Commissioner of Income-tax, Circle – 7(2)(1), Bengaluru.	Vs.	M/s. Bangalore Club, No.10, Field Marshal, K M Cariappa Road, Richmond Circle, Bengaluru – 560 025. **PAN : AAAAB 1046 L**
APPELLANT		**RESPONDENT**

Revenue by	:	Smt. R. Premi, Addl. CIT
Assessee by	:	Shri. Prashanth G. S, CA

Date of hearing	:	16.10.2019
Date of Pronouncement	:	23.10.2019

O R D E R

Per N. V. Vasudevan, Vice President:

This is an appeal by the Revenue against the order dated 14.08.2018 passed by the CIT(A)-7, Bengaluru, relating to Assessment Year 2013-14. The only issue that arises for consideration in this appeal is as to whether the CIT(A) was justified in directing the AO to follow the order of the Tribunal in the assessee's own case in ITA Nos.791 to 796/Bang/2010 dated 06.09.2011 for AY 2000-01, 2002-03 to 2006-07 and decide the question of allowing deduction on account of expenses incurred in earning interest income on fixed deposits under section 57(iii) of the Income Tax Act, 1961 ('Act').

2. The assessee is a club with the main objective of providing social, cultural, sporting, recreational and other facilities to its members. The assessee has large number of members, whose contribution is by way of subscriptions, guest charges, etc. The sums so collected are accumulated to make deposits with the banks. The money received as "advance membership fees" from those in the waiting list to become members are also deposited in the banks. The total deposits as on 31.03.2013 was a sum of Rs.69,92,68,894/-. The assessee received interest income of Rs.7,55,80,375/-. The aforesaid interest income was brought to tax under the head "income from other sources". The assessee claimed that it should be allowed expenditure in earning aforesaid interest income and quantified the expenditure at 25% of the interest income earned which was a sum of Rs.1,88,95,094/-. The aforesaid claim made by the assessee was not allowed by the AO for the reason that under section 57(iii) of the Act, only expenditure which is incurred wholly and exclusively for the purpose of making or earning income from other sources can be allowed as a deduction. According to the AO, the club's activities are not collection of money from members for depositing in the banks. The expenses incurred for running the club activities cannot be regarded as expenditure incurred wholly and exclusively for the purpose of earning income by way of interest. The AO accordingly denied the claim of the assessee for deduction.

3. On appeal by the assessee, the CIT(A) noticed that the Tribunal in assessee's own case for Assessment Year 2000-01, 2002-03 to 2006-07 in ITA Nos.791 to 796/Bang/2010 by order dated 06.09.2011 remanded the case to the AO with the following directions:-

> *"3. At the time of hearing, the learned counsel for the assessee Shri A Shankar submitted that these issues of taxability of the interest on fixed deposits kept with the nationalized banks had arisen during the earlier assessment years also i.e for assessment year 2001-02 and this Tribunal, taking into consideration the fact that the decision of the Hon'ble High Court of Karnataka in the assessee's own case in favour*

of the Revenue has been stayed by the Hon'ble Supreme Court in SLP 14475/2006 has restored the issue to the file of the Assessing Officer with a direction to follow the decision of the Hon'ble Supreme Court in the assessee's own case for the earlier assessment years. He thus prayed that for the relevant assessment years also the issue may be remitted to the file of the AO with a similar direction.

4. The learned DR though did not leave his ground that decision of the Hon'ble High Court on the same issue is in its favour and has to be followed, however fairly admitted that this Bench had taken into consideration the very same issue and has remitted the issue to the AO with a direction to follow the direction of the Hon `ble Supreme Court. The copy of the order of the Tribunal is also placed on record. Taking into consideration the facts and circumstances of the case and particularly that the facts of the case before the Hon`ble Apex Court are the same as the case before us, we deem it fit and proper to restore this issue to the file of the AO with a direction to await the decision of the Hon'ble Supreme Court in the assessee's own case for the earlier assessment years and apply the law as propounded by the Hon'ble Supreme Court for the relevant assessment year also. As regards the alternative contention about allowing of the expenditure incurred for earning of the interest income, this issue is also remitted to the file of ITA Nos. 791 & 796/B/10 the AO to decide the same in accordance with law after giving the assessee a fair opportunity of hearing."

4. Following the aforesaid Tribunal's order, the CIT(A) directed the AO to follow the directions of the Tribunal, as under:

"5.9 In view of the above, I am of considered view that since the matter is identical in the years under consideration, the AO should follow the direction of Hon'ble ITAT, Bangalore as per decisions in appellant's own case in ITA No. 791 to 796/ Bang/ 2010 and ITA No. 919/ Bang/2011 vide orders dated 06.09.2011 & 17.07.2012 respectively."

5. Aggrieved by the order of the Tribunal, the Revenue is in appeal before the Tribunal, raising the following grounds:

1. *The order of the learned CIT(A) is opposed to facts of the case.*

2. *Whether on the facts and circumstances of the case, the CIT(A) was justified in not discussing the facts of the case and directing the AO to follow the earlier order, though the merits of the case were not discussed in the relied upon order?*

3. *Whether on the facts and circumstances of the case, the CIT(A) was justified in deciding the issue in assessee's favour, when the assessee*

was unable to prove that the expenditure was incurred wholly and exclusively for the purpose of earning interest income as required u/s 57(iii) of the Income-tax Act, 1961?

4. *Whether on the facts and circumstances of the case, the CIT(A) was right in setting aside the issue to the AO when the issue should have been decided on merits?*

5. *For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.*

The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above.

6. At the time of hearing, it was brought to our notice that as against the very same order of the CIT(A), the assessee had also preferred an appeal before the Tribunal in ITA No.2937/Bang/2018. The Tribunal in its order dated 27.06.2019 remanded the issue to the AO for fresh consideration. Following were the observations of the Tribunal:-

"5. We have heard the rival contentions and perused the material on record. The sole disputed issue argued by the learned Authorised Representative on the claim of adhoc deduction of 25% of gross interest income further substantiated that the assessee club has Fixed Deposits out of the subscription, guest charges from the Membership and also incurred certain other establishment expenses therefore claim of 25% deduction is reasonable. We find that the learned CIT(Appeals) followed the decision of earlier years in assessee's own case referred at paras 5.7 to 5.9 of his order.

6. In the course of hearing, the learned Authorised Representative submitted that the assessee can substantiate with proper evidences for expenses and prayed that an opportunity be provided. We, considering the observations of the learned CIT(Appeals) and the submissions of the learned Authorised Representative consider granting of opportunity of hearing and the revenue shall not be at a loss if opportunity is provided to the assessee to substantiate its claim. Accordingly we restore the disputed issue to the file of the learned CIT (Appeals) to adjudicate

afresh and shall provide adequate opportunity of hearing to substantiate and file the evidences and documents in support of claim further and the assessee shall co-operate in submitting the information expeditiously for early disposal of the appeal and we order accordingly."

7. The learned DR relied on the order of the AO and the grounds of appeal raised before the Tribunal by Revenue.

8. After considering the rival submissions, we are of the view that since the very same issue raised in the assessee's appeal has already been decided by the Tribunal by remanding the same to AO for fresh consideration, similar order should be passed in the appeals of the Revenue also. One of the grievance of the revenue in this appeal projected in Gr.No.4 is that the CIT(A) ought to have decided the issue and ought not to have remanded the issue to the AO for fresh consideration, as he does not have power to remand u/s.251 of the Act. We are of the view that the grievance of the revenue would stand addressed, if the direction by the CIT(A) to the AO to consider the issue afresh, should be regarded as direction by the Tribunal. With these observations, we allow the appeal of the assessee for statistical purposes.

8. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on this 23rd day of October, 2019.

Sd/-	Sd/-
(A. K. GARODIA)	**(N. V. VASUDEVAN)**
Accountant Member	**Vice President**

Bangalore.
Dated: 23rd October, 2019.
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Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.