

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.453/Mum/2019
(Assessment Year: 2014-15)**

Rahul Mohanlal Bafna 2004, Casa Grande Tower S.B.Marg, Delisle Road Next to Peninsula Park Lower Parel Mumbai-400 013	Vs.	ITO-21(3)(1) Piramal Chambers, Lalbaug, Parel Mumbai-400 012
PAN/GIR No.AAFPB1869F		
Appellant)	..	Respondent)

Assessee by	Shri R.N. Vasani & Shri V.H.Vasani, AR's
Revenue by	Shri Ashish Kumar, DR
Date of Hearing	27/01/2020
Date of Pronouncement	05/02/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-48, Mumbai, dated 31/12/2018 and it pertains to Assessment Year 2014-15.

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

1. *The Id. CIT(A)-48 committed gross error of law and facts in confirming the disallowances made by the assessing officer-21(3)(1) of Rs. 22,50,009/- or the ground that the expenses incurred were not wholly and exclusively for the purpose of business.*

2. She failed to appreciate the facts that the said expenses were revenue in nature, incidental and wholly & exclusively for the purpose of earning income,

3. She failed to appreciate the facts that club membership Fee being revenue in nature and not capital or personal expense is allowable u/s 37(1) / 57 of the Income-tax Act, 1951

4. She erred in not accepting the facts that the corporate membership being costly it was taken by him in his individual name and claimed against his revenue income.

5. She erred in merely confirming the addition made on assumption by the assessing officer without disputing the nexus, necessity, business expediency and genuineness explained by the appellant.

6. She erred in not accepting the jurisdictional precedents submitted by the appellant in the course of appellate and assessment proceedings.

3. The brief facts of the case are that the assessee is a partner in partnership firm of M/s Okay Industries. The assessee has declared loss from business/profession, loss from income from house property and income from other sources. The assessee has filed her return of income, declaring total loss at Rs. 14,09,440/-. The case was selected for scrutiny under CASS for the reasons 'negative income from partnership firm resulting in reduction of the taxable income' and accordingly, notices u/s 143(2) and 142(1) of the I.T.Act, 1961, were issued. In response to notices, the Authorized Representative of the assessee appeared from time to time and filed various details, as called for. During the course of assessment proceedings, the Id. AO noted that the assessee is a partner in a partnership firm M/s Okay Industries and the only income declared under the head income from business is interest from partnership firm current account and capital account. The Ld. AO, further noted that against income from partnership firm, the assessee has claimed deductions for various expenditure, including membership,

subscription fees paid to National Sports Club of India (NSCI) of Rs. 22,47,200/-. Therefore, he called upon the assessee to explain as to why membership and subscription fees paid to NSCI of Rs. 22,47,200/- shall not be disallowed, while computing income from business and profession, because said expenditure is in the nature of personal expenditure, which cannot be allowed as deduction. In response, the assessee vide letter, dated 21/11/2016 submitted that expenditure incurred on Club membership and subscription fees is deductible under section 37 of the I.T.Act, 1961 against income assessable under the head income from business. The Ld. AO after considering relevant submissions of the assessee and also, taken note of provision of section 37 of the Act, opined that any expenditure, which is in the nature of capital expenditure or personal expenses of the assessee shall not be allowed as deduction u/s 37 of the I.T.Act, 1961. Accordingly, disallowed club membership and subscription fees paid to National Sports Club of India of Rs. 22,50,000/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated her submissions made before the Id. AO along with certain judicial precedents and argued that expenditure incurred in the course of business or profession for club membership and subscription fees is in the nature of revenue expenditure, which is deductible u/s 37(1) of the I.T.Act, 1961. The Ld.CIT(A) after considering relevant submissions of the assessee and also, taken note of the fact that the assessee has not carried out any business activity in her individual capacity, came to the conclusion that expenditure incurred for club membership and subscription fees

paid to National Sports Club of India is not in the name of the firm and also, the amount has not been paid from firm account. Therefore, it cannot be said that expenditure is incurred wholly and exclusively for the purpose of business, which can be allowed as deduction u/s 37(1) of the I.T.Act, 1961. Accordingly, confirmed additions made by the Ld. AO towards disallowances of payment made to National Sports Club of India for membership and subscription fees. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. The Ld. AR for the assessee submitted that the Ld.CIT(A) was erred in confirming additions made by the Ld. AO towards disallowances of Club membership and subscription fees, which was claimed as business expenditure against income from business being interest on capital and current account from partnership firm without appreciating the fact that Club membership fees and subscription fees is in the nature of revenue expenditure, which is incurred wholly and exclusively for the purpose of business of the assessee. The Ld. AR, further referring to various judicial precedents, including the decision of Hon'ble Supreme Court, in the case of CIT vs United Glass Manufacturing Company. Ltd. in Civil Appeal No. 6447-6449 of 2012 submitted that the Hon'ble Supreme Court categorically held that club membership fees for benefit of employees business expenses deductible u/s 37(1) of the I.T.Act, 1961. In this regard, he relied upon the following judicial precedents:-

1. *CIT v. United Glass Mfg. Co. Ltd. [Civil Appeal Nos, 6447 to 6449 of 2012]*
2. *CIT (Large Tax Payer Unit), Centre-1, Mumbai v. Lubrizol India Ltd. [2013] 218 Taxman 69 (Bombay)*

3. *CIT v- Apollo Tyres Ltd. (NO. 3) [2019] 416 ITR 554 (Ker)*
4. *PCIT v. Bayer Vapi Pvt. Ltd. [2019] 13 ITR-OL 639 (Guj)*
5. *Dy. CIT v, M/s. Deloitte ToucheeTohmatsu [ITA no.3017/Mum./2016 Mum-Trib]*

6. The Ld. DR, on the other hand, strongly supporting order of the Ld. AO, as well as the Ld.CIT(A) submitted that the Ld. AO was right in disallowed subscription and membership fee paid to National Sports Club of India, because the assessee has not carried out any business activity in her individual capacity in order to get the benefit of deductions towards said expenditure, while computing income under the head income from business or profession. He, further submitted that although, various courts have held that club membership fees paid for the benefit of employees is in the nature of revenue expenditure, which is incurred wholly and exclusively for the purpose of business of the assessee. But, fact remains that in this case, the assessee has claimed deductions towards said expenditure against business income being interest on capital and current account from partnership firm, without having any business activity carried in her individual capacity. Therefore, the Ld. AO, as well as the Ld.CIT(A) were right in disallowed said expenditure.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The assessee has made payment of Rs. 22,50,009/- towards membership fees and subscription fees to Juhu Vile parle, Gymkhana and National Sports Club of India and claimed deductions towards said expenditure, while computing income under the head income from business and profession being interest on capital and current account from partnership firm M/s Okay

Industries. The provisions of section 37(1) deals with a situation, where any expenditure incurred or laid out wholly and exclusively for the purpose of business or profession shall be allowed in computing the income chargeable under the head profits and gains of business or profession, but such expenditure should not be in the nature of capital expenditure or personal expenses of the assessee. In order to get the benefit of deduction any expenditure, first the assessee should carried out some business activity and secondly, the expenditure should be incurred wholly and exclusively for the purpose of business of the assessee. In this case, the assessee is neither, carried out any business activity in her individual capacity, nor incurred said expenditure wholly and exclusively for the purpose of business of the assessee, because when there is no business activity the argument that club membership fees and subscription would benefit the business of the assessee is very farfetched. Admittedly, the assessee has derived interest income from partnership firm against which she had claimed various deductions, including subscription and membership fees paid to various clubs. Further, the membership fees also not in the name of the firm or in the name of all the partners. The payments for membership fees has not been made from partnership firm account, but, rather it has been paid from assessee own funds. Therefore to claim that such expenditure is related to the business income of the firm, in which the assessee is a partner is incorrect. No doubt, various courts, including the Hon'ble Supreme Court have held that if club membership fees is incurred for the benefit of the employees, then it would be in the nature of revenue expenditure wholly and exclusively incurred for business purpose and is deductible u/s 37(1) of the I.T.Act, 1961. But, in order to apply the ratio of the said decision, it

is for the assessee to prove that she is in fact carrying out business in her individual capacity and in order to benefit her business, she had incurred said expenditure. In this case, the assessee is neither carrying out any business activity, nor incurred said expenditure wholly and exclusively for the benefit of her business. Therefore, we are of the considered view that there is no merit in the contention of the assessee and also, the support taken from various case laws. Hence, we are of the considered view that there is no error in the findings of the Ld.CIT(A) in confirming disallowances made by the Ld. AO towards subscription and membership fees paid to clubs, while computing income under the head profits and gains of business or profession. Accordingly, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss, appeal filed by the assessee.

8. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on this 05/02/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated /02/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai

		Date	Initial	
WHETHER DICTATION PAD ENCLOSED WITH THE FILE : Yes/No (as the order has been typed with the help of manuscript)				
1.	Draft dictated on	23/01/2020		Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS
6.	Date of pronouncement			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			