

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 4614/Mum/2018 (A.Y: 2015-16)**

M/s. Indiawin Sports Private Limited Court House, 3 <sup>rd</sup> Floor Lokmanya Tilak Marg, Dhobi Talao Mumbai – 400 002  <b>PAN: AADCR8195F</b>	v.	Dy. Commissioner of Income-tax Central circle – 6(2) Room No. 1903, Air India Building Nariman Point, Mumbai – 400 021
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA No. 4678/Mum/2018 (A.Y: 2015-16)**

Dy. Commissioner of Income-tax Central circle – 6(2) Room No. 1903, Air India Building Nariman Point, Mumbai – 400 021	v.	M/s. Indiawin Sports Private Limited Court House, 3 <sup>rd</sup> Floor Lokmanya Tilak Marg, Dhobi Talao Mumbai – 400 002  <b>PAN: AADCR8195F</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by** : **Shri Rajesh Lakhara**  
**Department by** : **Shri Awungshi Gimson**  
  
**Date of Hearing** : **21.11.2019**  
**Date of Pronouncement** : **19.02.2020**

**ORDER****PER C.N. PRASAD (JM)**

1. These two cross appeals are filed by the assessee and revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 54 [hereinafter in short “Ld.CIT(A)”] dated 28.05.2018 for the A.Y. 2015-16.

2. The assessee in its appeal has raised following grounds: -

*“1. The learned Commissioner of Income-tax - (Appeals - 54) {hereinafter referred to as CIT(A)} erred in confirming the action of the Deputy, Commissioner of Income-Tax CC-6(2), Mumbai (hereinafter referred to as AO) in disallowing an amount of Rs.15,64,613/-being travelling expenses incurred on behalf of family members of players, by holding that these persons have not rendered any service to the appellant and the expenses are private expenses of individuals unrelated to the business.*

*The appellant submits that the travelling expenses incurred on behalf of family members of players are incurred for the purpose of business and the same should be allowed as claimed.”*

3. The revenue in its appeal has raised following grounds: -

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.44.76 crores being franchise fees paid to BCCI to participate in the IPL by holding the same as capital in nature and allowing depreciation on the same?”*

2. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the decision of Hon’ble ITAT in assessee’s own case in earlier years have not been accepted by the department and appeal before the Hon’ble High court is pending on this issue?”*

3. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.59,30,724/- being 10% of the Hospitality expenses of Rs.5,93,07,239/- by holding that the same is related to assessee’s business?”*

4. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the decision of Hon'ble ITAT in assessee's own case for earlier A.Y. 2011-12 & 2012-13, was accepted owing to smallness of tax effect and the decision was not accepted on merits?"*

4. At the outset, Learned Counsel for the assessee submitted that all the issues in both these appeals were decided by the Tribunal for various assessment years from A.Y. 2009-10 to A.Y. 2012-13 and Copies of the orders were placed on record.

5. Ld. DR fairly submitted that all these issues were decided by the Tribunal in its earlier orders for various assessment years.

6. In so far as the assessee's appeal is concerned assessee challenged the order of the Ld.CIT(A) in confirming the action of the Assessing Officer in disallowing travelling expenses incurred on behalf of family members of the players holding it to be the expenses unrelated to the business and they are personal in nature. We find that this issue has been decided by the Tribunal in ITA.No. 5813/Mum/2016 dated 13.02.2019 wherein the Tribunal sustained the disallowance made by the Assessing Officer observing as under: -

*"18. We have heard both the parties and perused the materials available on record. Admittedly, the issue involved in the present appeal, i.e. whether travelling expenses incurred on family members of players is incurred wholly and exclusively for the purpose of business and which is related to the business of the assessee was a subject matter of deliberations by the ITAT, Mumbai Bench "H" in assessee's own case for AY 2011-12 where the Tribunal held that the assessee failed to make out a case for necessity of incurring*

expenditure on the family members of the players. The relevant observations of the Tribunal are as under:-

*“5. We have considered rival contentions and gone through the orders of authorities below and also deliberated by the judicial pronouncements cited by the Id. AR during the course of hearing before us. From the record we found that the assessee had debited Rs.44.76 crores paid to the BCCI-IPL as franchisee fees for the IPL and claimed the same as revenue expenditure for the AYs under consideration. It was observed that the appellant had entered into Franchisee Agreement dated 10.04.2008 with the BCCI-IPL and had got franchise rights for the Mumbai Indian team for the term of the League. In the current year, the appellant had paid Rs.44.76 crores to the BCCI-IPL on this account, As per the terms and conditions of agreement payment was to be made annually as per the contractual obligation of the assessee to exploit the franchisee. This was an annual payment spread over the period of right granted and directly related to the earning of income each year. This annual franchisee fees was payable in 2 parts i.e. Rs. 13,42,80,000/- as League deposit on or before 2nd Jan and Rs,31,33,20,000/- on the date of the first match in the League in each year. The League deposit was refundable, if League did not take place and in that event the franchisee is not required to pay franchisee fee. The payment was an annual charge and hence the franchise fee was claimed as business expenditure. Referring to clauses 1.2 and 11 of the said agreement, the assessee has right to operate the of the IFL and has right to terminate the agreement, if the matches do not take place for two consecutive years. The agreement between the parties can be terminated by them with immediate effect by giving notice to other party on breach of any clause in the agreement. Thus, the assessee, in the light of above termination clause, has not received any enduring benefit by paying annual franchise fees. Though it was granted some rights, but "Central Rights" which are crucial for managing and operating the team, are retained by the BCCI as stipulated clause 4.1 of the Franchise Agreement. The rights exercised by the assessee are subject to prior decision and acknowledgement of BCCI as categorically stipulated in clause 4.3 of the agreement. Hence, the assessee was not granted any absolute right but only a limited one.”*

19. We further notice that although the Ld.AR for the assessee tried to argue the case in light of certain judicial precedents that the presence of spouse of the players and their family members helped in attracting sponsors as well as provide moral support to the players which ultimately helps the business of the assessee. But, considering the fact that the issue and is already considered by the

*Tribunal keeping in view the judicial discipline, we are not inclined to accept the arguments of the Ld.AR for the assessee. Therefore, we affirm the addition made by the AO towards disallowance of travelling expenses incurred on family members of players.'*

7. Respectfully following the said decision, we uphold the disallowance made by the Assessing Officer and reject the ground raised by the assessee.

8. Coming to Ground Nos. 1 & 2 of grounds of appeal of the revenue relating to disallowance of franchise fee paid to BCCI, the Tribunal for the A.Y. 2012-13 in ITA.No. 6262/Mum/2016 dated 13.02.2019 upheld the order of the Ld.CIT(A) in deleting the said disallowance observing as under: -

*"8. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The issue involved in the present appeal, i.e. annual franchise fees paid to BCCI for acquiring right in IPL matches is a revenue expenditure which is deductible u/s 37(1) or a capital expenditure which gives enduring benefit was a subject matter of deliberations by the ITAT, Mumbai Bench "I" in assessee's own case for AYS 2009-10 & 2010-11. The ITAT, by considering relevant facts and also by following the coordinate bench of Hyderabad Tribunal in the case of Deccan Chargers Sporting Ventures Ltd (supra) held that annual franchise fees paid to BCCI is revenue in nature which is deductible u/s 37(1) of the Income-tax Act, 1961. The relevant observations of the ITAT are as under:-*

*"9. We had carefully gone through orders of the co-ordinate bench in case of M/s. Deccan Charges (supra) wherein exactly similar issue decided by Tribunal in assessee's favour after observing as under:*

*"Before considering the claim of alienability of deduction, it is necessary to decide whether the aforesaid franchise right is a capital asset eligible for depreciation or it is a revenue expenditure. As per clause 3 of the FA, the impugned agreement shall come into effect upon*

signature and shall continue for so long as the League continues subject to termination, suspension or renewal as provided (the 'Term'). As per clause 4 of the FA, the franchisee (appellant) has acknowledged and agreed that BCCI-IPL owns the Central Rights and the BCCI has all pervasive rights to exploit present as well as future Central Rights. The Central Rights includes media rights, umpire sponsorship rights, tile sponsorship rights, official sponsorship rights, stadium advertising right, games rights etc. The franchisee would be allowed to enjoy only those rights which BCCI-IPL would Acknowledge. Another very important clause laid down in the FA f clause 7.1 (b)] is that from and including 20J8 onwards, for definite period, an amount equal to 20 per cent of (he franchisee income received in respect of such year shall be paid to BCCI-IPL by the franchisee appellant. Further, franchisee shall have no right to assign or to sub-contract or otherwise delegate the performance of any right or Obligation under the agreement without prior written permission from the BCCI-IPL. Powers to terminate the agreement is mostly tilted in favour of the BCCI-IPL (clause 16 of FA). Franchisee shall also not sub-let or sub-contract the franchisee rights without prior written permission of the BCCI-IPL. Further, as per clause 10.1 of FA, the appellant does not have any right to assign or delegate the performance of any right or obligations under this agreement. The same vests with BCCI-IPL only. Perusal of the above clauses reveal • that under the terms of the agreement, appellant company never enjoys the proprietary rights. The proprietary rights continue to vest in the BCCI-IPL. Therefore, appellant cannot be regarded as having acquired either wholly or any part of proprietary rights by or under the agreement. Therefore, in view of the above facts and circumstances, franchise right cannot be treated as capital asset".

6. We agree with the above order of the Ld. CIT(A) as the amount was not for acquiring capital rights- It is for conducting the matches on yearly basis. If assessee has not paid the amount, it loses the right to conduct the matches. Accordingly, Ld. CIT(A) has come to correct conclusion that the right acquired by assessee is not a perpetual right and the expenditure paid on yearly basis is revenue expenditure.

6.1. He also analysed various case law vide para 5.3.4 and 5.3.5 as under:

"Against the above factual ground, the issue for adjudication is whether the above franchise right

*constitutes capital asset entitled to depreciation. No doubt, section 32(1) includes franchise right as part of the intangible assets entitled to depreciation. The main requirement for considering whether the franchise rights constitute a depreciable asset is that such franchise right should be owned wholly or partly by the appellant. Merely because franchise rights are treated as intangible assets, it does not mean that any or all payments made towards franchise rights would become capital payment and such rights constitute a depreciable asset. It has to be determined on the basis of actual rights conferred on the assessee. Is it a right of ownership or merely a right to use. The former will be capital, while the latter will be in the revenue field. Analogy can be drawn from the following instances:*

*(i) Technical know-how is an intangible asset and entitled to depreciation u/s 32. However, if an annual fee is paid for the use of technical know how and right to use technical know how ceases on the termination of such agreement, then the annual payments made are revenue in character and are allowable as deductible expenditure. The Hon'ble Supreme Court in the case of CIT v. LA.E.C. (Pumps) Ltd, 232 ITR 316 (SC) held that use of patents and designs for ten years with an option to extend or renew the same was held to be a revenue expenditure. The ratio is fully applicable to the facts of the present case. Similarly, in case of other assets also which are normally treated as fixed assets entitled to depreciation, if an assessee takes these assets on lease or hire, the payments made annually for the right to use these assets are revenue expenditure. They would not be treated as capital assets entitled to depreciation on the annual lease payments. Rental payment in respect of buildings, which are fixed assets, taken on lease would constitute revenue expenditure. Whatever may be the period of lease, the annual payment will be only revenue in nature. In fact the Madras High Court in the case of CIT v. Gemini Am (P) Ltd, 254 ITR 201, following the Apex Court in CJT v. Madras Auto Services Pvt. Ltd, 233 ITR 468 (SC), has held that upfront payment of future rent for 41 years would still be revenue expenditure. In the case of lease of immovable property, the Supreme Court has held that any premium paid for acquisition of the right to lease would constitute capital payment but a periodic payment for the actual use of the property*

*[CIT v. Panbari Tea Co. Ltd. 57 ITR 422 (SC)]. While tenancy right per se is considered as a capital asset [5.5 (2)], payment for the usage of such tenancy right is always revenue expenditure.*

*(iv) The Karnataka High Court in the case of CIT v. HMT Ltd. 203 ITR 820 has held that even though lump sum amount paid as premium in connection with lease of property as long as it is towards rent for the use of the property, it is allowable as revenue expenditure.*

*(v) The Supreme Court in the case of Empire Jute Manufacturing Co, [124 ITR 1 (SC)] has held that even if the payment gives benefits for a period of time it will be in the revenue field only, if it is incurred in connection with day to day operation and does not affect the capital structure of the assessee.*

*(vi) Expenditure on technical know-how, even if of enduring character is revenue expenditure if its impact is on the running of business [CIT V MRF Ltd, 144 ITR 678 (Mad)]*

*(vii) Acquisition of goodwill of business is acquisition of capital asset and therefore, its purchase price would be capital expenditure. Where, however, the transaction is not one for acquisition of goodwill, but for the right to use it, the expenditure would be revenue expenditure [Devidas Vithaldas & Co v. CIT, 84 ITR 277 (SC)].*

*5.3.5 From the above legal pronouncements, it is clear that the character of the payment would depend on nature of rights acquired and the period for which such rights was acquired by the appellant. Any payment made for obtaining a commercial right would be a capital expenditure. But payment made periodically for exploiting such rights is revenue in nature. Therefore, in the instant case, payment made at the first instance for grant of right to be franchisee can be considered as capital payment. However, the subsequent annual payments made by the assessee are clearly for exploiting the rights as a franchisee, which are for a year and which can be terminated for non-payment of the franchise fees in the subsequent year. Therefore, the franchise fee paid is revenue in nature because by making such annual payment the appellant does not acquire any rights of permanent nature".*

7. *In view of these judicial principles which clearly apply to the facts of the case, we do not find any reason to interfere with the order of CIT(A) who analysed the issue on the given facts. There is no merit in Revenue 's grounds and accordingly, Revenue 's appeal is dismissed. "*

10. *Respectfully following the decision of co-ordinate bench on the similar facts, we do not find any merit for treating the assessee's claim as capital expenditure, which is essentially revenue in nature. Accordingly we set aside the order of iower authorities and direct the AO to allow assessee's claim of revenue expenditure. As we have already decided ground no.1 in assessee's favour by holding that annual payment of Rs.447.60 crores being franchise fees paid to BCCI to participate in IPL was revenue in nature, therefore, allowable during the year under consideration, we are not going to assessee's alternate claim of allowing depreciation on the entire value of intangible rights, which is also supported by the decision of co-ordinate bench in case of India Cements Limited, India Cements Limited order dated 01.01.2016."*

12. *Facts remain unchanged. The revenue fails to bring on record any new facts contrary to the facts recorded by the ITAT in the light of certain judicial precedents. The revenue also failed to bring on record any contrary decision in its favour. Therefore, consistent with the view taken by the co-ordinate bench in assessee's own case for earlier years, we are of the considered view that there is no error in the findings recorded by the Ld.CIT(A) while deleting addition made by the AO towards annual franchise fees paid to BCCI. Hence, we are inclined to uphold the order of Ld.CIT(A) and dismiss appeal filed by the revenue."*

9. No distinguishable facts have been brought on record. Thus, respectfully following the said decision, we uphold the order of the Ld.CIT(A) and reject the grounds raised by the revenue.

10. Coming to Ground No.3 of grounds of appeal, we observe that the Tribunal in ITA.No. 5813/Mum/2016 dated 13.02.2019 deleted the adhoc disallowance made at 10% towards hospitality expenditure observing as under: -

“22. Having considered the arguments of both the sides, we find that the issue involved in the present appeal as regards adhoc disallowance of hospital expenses was a subject matter of deliberations by the co-ordinate bench of ITAT. The ITAT, after considering relevant facts, has deleted addition made by the AO. The relevant observations of the bench are as under:-

6. Following decisions lay down the ratio that a company being an artificial person, there cannot be any personal element in expenses incurred by a company and subsequently, no disallowance in the hands of a company can be made u/s 37 of the Act. The addition, if any, can be made in the hands of a person (e.g. employee, directors etc.) receiving such benefits.

<i>Sayaji Iron &amp; Engg. Co (A leading judgement- It has subsequently been followed by the Mumbai tribunal in various cases as under)</i>	<i>253 ITR 749</i>	<i>Gujarat HC</i>
<i>Ramkishin Textiles (P.) Ltd vs ITO (Para-8)</i>	<i>16 taxmann.com 57</i>	<i>ITAT-Mumbai</i>
<i>Johnson &amp; Johnson Ltd vs ACIT (Para-35)</i>	<i>43 taxmann .com 255</i>	<i>TAT-Mumbai</i>
<i>KSS Ltd-92016) vs DOT (Para-6.2)</i>	<i>66 taxmann. com 97</i>	<i>ITAT-Mumbai</i>
<i>Fairfield Atlas Ltd. Vs ACIT (Para-9)</i>	<i>3 taxmann. com 760</i>	<i>ITAT-Mumbai</i>
<i>Vieshesh Films (P.) Ltd. Vs DOT (Para-7)</i>	<i>26 SOT 64</i>	<i>ITAT-Mumbai</i>
<i>ntersil India Ltd. Vs Add. CIT (Para- 2-6)</i>	<i>101ITD85</i>	<i>ITAT-Mumbai</i>
<i>vfarkwell Hose Industries (P.) Ltd. vs JCIT Para 1 9)</i>	<i>95ITD271</i>	<i>ITAT-Mumbai</i>

7. Respectfully following the propositions laid down in above judicial pronouncements, we do not find any merit for the disallowance of 10% of the hospitality expenses on adhoc basis in the hands of the assessee being a Corporate entity / artificial person.”

23. In this view of the matter and consistent with the view taken by the coordinate bench, we are of the considered view that the AO was erred in making adhoc disallowance of 10% of hospitality expenditure. Therefore, we direct the AO to delete addition made towards hospitality expenses.”

11. Facts being identical, respectfully following the said decision we direct the Assessing Officer to delete the adhoc disallowance made towards hospitality expenses. This ground of appeal is dismissed.

12. In the result, both appeal of the assessee as well as the revenue are dismissed.

Order pronounced in the open court on the 19<sup>th</sup> February, 2020

Sd/-  
**(G. MANJUNATHA)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 19/02/2020  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**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.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**