

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

**BEFORE SHRI S. RIFAUR RAHMAN, AM &  
SHRI RAVISH SOOD, JM**

आयकरअपीलसं./ I.T.A. No. 5352/Mum/2018  
(निर्धारणवर्ष / Assessment Year: 2014-15)

Shailender Mayank Hemchand, Sans Souchi, Ground floor, 26-A, Ridge Road, Mumbai-400006	<b>बनाम/ Vs.</b>	ACIT-19(3), Matru Mandir, Grant Road, Mumbai-400 007
स्थायीलेखासं./जीआइआरसं./PAN No. AAAPH3180J		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Dr. P. Daniel, AR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri V. Vinod Kumar, DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	28.11.2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	08.01.2020

**आदेश / ORDER**

**PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):**

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-2, Mumbai, in short 'Ld. CIT(A)' dated 15.06.18 for AY 2010-11.

2. The brief facts of the case are that assessee is an individual and dealer of jewellery. During this year, assessee has taken a club membership of CCI club and paid 22 lakhs as full time membership fees. The AO asked the assessee to substantiate the above payment and why this payment cannot be treated as capital expenditure instead of revenue. In this respect, assessee vide its letter dated 21.11.2016 submitted as under:-

*"In the assessment proceedings your good self has raised the query regarding allowability of club membership fees paid by the assessee of Rs.22,00,000/- In this regard we have to state as under-*

*The assessee is mainly dealing in diamond. The assessee is carrying on business from his residence and he does not have any other place of business.*

*In order to meet client, he became member of CCI Club by paying membership fees of Rs.22,00,000/-.*

*Sir the assessee turn over increase substantially in subsequent assessment years the details are a sunder-*

<i>Assessment year</i>	<i>Rs.</i>
<i>2015/2016</i>	<i>36,15,82,159/-</i>
<i>2016/2017</i>	<i>1,31,29,891/-</i>

*Recently Bombay High Court has decided the said issue in favour of assessee in the case of- CTT v/s. Jindal Iron & Steel Co. Ltd.*

*The ITAT Mumbai bench 'F' decided the said issue in favour of assessee in the case of- Food and Innd Ltd [2016]71 Taxmann.com299*

*After considering Apex Court decision in the case of-*

*CIT v/s. United Glass Glass Mfg. Co. Ltd [Civil Appeal No. 6447 to 6449 of 2012, dated 12.09.2012]*

*There is no specific provision in the Income Tax Act for allowing or disallowing the claim of an assessee for deduction of expenses. Hence, question of admissibility or inadmissibility of such expenditure in income tax assessment is to be judged in the context of section 37(1) of the Act. To be an allowable expenditure under section 37(1), the money paid out must be (a) paid out wholly and exclusively for the purpose of the business or profession and further (b) must not be (i). capital expenditure (ii) personal expense, or (in) an allowance of the character described in section 30 to 36. Only when both negative and positive conditions are satisfied that an expenditure can be considered and allowed under section 37. Negative conditions are: that the expenditure should not be of the nature described*

*under section 30 to 36, and in the nature of capital and personal expenses of the assessee. And if the expenditure satisfies these tests, it has to satisfy the positive test, that it is laid out wholly and exclusively for the purpose of the business.*

*In the above context it needs to be mentioned that section 37(1) stipulates that the expenditure incurred should be "wholly and exclusively" for the purpose of the business. The expression "wholly" has been used with reference to the quantum, while the expression 'exclusively' refers to the nature of the purpose of the activity in which the expenditure is incurred.*

3. After perusing the above, AO rejected the submission of the assessee and disallowed the membership fees.
4. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) confirmed the addition made by the AO and dismissed the appeal of the assessee.
5. Now before us, the assessee has preferred appeal by raising the grounds of appeal as under:-

*I. The Learned CIT(A) erred in law and facts of the case in confirming disallowance of Membership Fees of Rs. 22,60,000/- paid to Cricket Club of India.*

*II. The Appellant prays for appropriate relief.*

*The appellant crave leave to submit additional grounds of appeal, if any, at or before the time of hearing and / or after, modify, reframe any grounds of appeal at or before the time of hearing.*

6. At the outset, Ld. AR appearing on behalf of the assessee submitted before us that the membership is very much relevant for the purpose carrying on the assessee's business and further he brought to our notice the turnover achieved by the assessee during the assessment year 2015-16 & 2016-17 and the turnover of the assessee increased substantially after taking the membership. In this regard, he relied on the following decisions which are in favour of the assessee:-

- i) CIT vrs. Groz Beckert Asia Ltd [2013] 351 ITR 196 (P & H)
- ii) Otis Elevator Co. (India) Ltd. vrs. CIT (1992) 195 ITR 682 (Bom)

7. On the other hand, Ld. DR opposed the submission of Ld. AR and supported the orders of lower authorities and submitted that the life time membership is having enduring benefit and it can only be treated as capital expenditure not revenue.

8. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT in ITA No. 276, 277. 2200 & 3017/Mum/2017 in the case of DCIT vrs Deloitte Touche Tohmatsu India Pvt. Ltd, wherein it was held as under:-

*Business expenditure-Capital or revenue expenditure-  
Payment of club and hotel membership fee of director-  
Payment made by the assessee company towards club  
and hotel membership fee of a director is allowable as  
revenue expenditure – CIT vrs. United Glass  
Manufacturing Co. Ltd. (Civil Appeal no. 6447 of  
2012, dated 12<sup>th</sup> Sept, 2012)*

9. We also draw strength from the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vrs. Groz

Beckert Asia Ltd [2013] 351 ITR 196 (P & H), wherein it was held as under:-

*CAPITAL OR REVENUE EXPENDITURE—CORPORATE MEMBERSHIP TO GOLF CLUB—EXPENDITURE SHOULD BRING INTO EXISTENCE AN ASSET OR AN ADVANTAGE FOR ENDURING BENEFIT OF A TRADE —MEMBERSHIP FEE PAID TO CLUB —NO CAPITAL ASSET IS CREATED OR COMES INTO EXISTENCE—MEMBERSHIP OBTAINED FOR RUNNING BUSINESS WITH A VIEW TO PRODUCE PROFIT—REVENUE EXPENDITURE—'INCOME-TAX ACT, 1961*

*If an item of expenditure is to be considered capital in nature, the expenditure should bring into existence an asset or an advantage for the enduring benefit of a trade. Membership fee paid to a club does not bring into existence an asset or an advantage for the enduring benefit of the business. It is an expenditure incurred for the period of membership and is not long lasting. By subscribing to the membership of a club, no capital asset is created or comes into existence. By such membership, a privilege to use facilities of a club alone, are conferred on the assessee and that too for a limited period. Such expenses are for running the business with a view to produce the benefits to the*

*assessee. Consequently, it cannot be treated as capital asset.*

*Held accordingly, dismissing the appeal, that the corporate membership to the golf club was for a limited period of five years. It was obtained for running the business with a view to produce profit. Thus, the corporate membership fee paid to the golf club was of revenue expenditure.*

*CIT v. ENGINEERS INDIA LTD. [1999] 239 ITR 237 (Delhi), CIT v. NESTLE INDIA LTD. [2008] 296 ITR 682 (Delhi), GUJARAT STATE EXPORT CORPORATION LTD. v. CIT [1994] 209 ITR 649 (Guj), CIT v. SAMTEL COLOR LTD. [2010] 326 ITR 425 (Delhi) and OTIS ELEVATOR Co. (INDIA) LTD. v. CIT [1992] 195 ITR 682 (Bom) approved.*

10. In the present case, assessee has taken permanent membership of CCI Club and assessee is allowed to use the facility of the club and it can never create any capital assets. As the assessee can only utilize the facility and in case, he decides to surrender the membership, he will not get any refund. Therefore, assessee does not get any right by becoming a member. The fact that assessee utilizes the facilities for the purpose of his business

and it is brought on record by the assessee that the business has increased after taking membership in the club. Considering the turnover, the membership fees is very negligible and it can never be treated as capital assets having enduring benefit. It may give benefit of utilizing the club facilities, but cannot create any right of endurance /right of possession.

11. Therefore, respectfully following the aforesaid decisions which is applicable *mutatis mutandis* in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, we **allow** the ground raised by the assessee.

12. In the net result, the appeal filed by the assessee stands **allowed.**

*Order pronounced in the open court on 8<sup>th</sup> Jan 2020.*

<i>Sd/-</i> (Ravish Sood) न्यायिकसदस्य / Judicial Member मुंबई Mumbai;दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 08.01.2020
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
  2. प्रत्यर्थी/ The Respondent
  3. आयकरआयुक्त(अपील) / The CIT(A)
  4. आयकरआयुक्त/ CIT- concerned
  5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
  6. गार्डफाईल / Guard File
- आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**