IN THE INCOME TAX APPELLATE TRIBUNAL"H" BENCH, MUMBAI

BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

I.T.A. No.5237/Mum/2017
(Assessment Year: 2010-11)

DCIT, Central Circle-4(2), Mumbai Central Range-4 Pr. CIT(C)-2 R. No.1918, 19th Floor, Air India Building, Nariman Point, Mumbai-400021.	Vs.	M/s. Knight Riders Sports P. Ltd. Backstage, Plot No.-612, 15th Road, Junction of Ramkrishna Mission Road, Santacruz (W), Mumbai-400054.

I.T.A. No.5092/M/2017
(Assessment Year: 2010-11)

M/s. Knight Riders Sports P. Ltd. Backstage, Plot No.-612, 15th Road, Junction of Ramkrishna Mission Road, Santacruz (W), Mumbai-400054.	Vs.	DCIT, Central Circle-4(2), R. No.1918, 19th Floor, Air India Building, Nariman Point, Mumbai-400021.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. : AADCK3118M		
(Appellant)	..	**(Respondent)**

Assessee by:	Shri Hiten Chande (AR)
Revenue by:	Shri Padmapani Bora (DR)

Date of Hearing: 06/03/2020
Date of Pronouncement: 06/03/2020

O R D E R

PER AMARJIT SINGH, JM:

The revenue as well as assessee have filed the above mentioned appeals against the order dated 02.05.2017 passed by the Commissioner of

Income Tax (Appeals)-52, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2010-11.

ITA. NO. 5237/M/2017

2. The revenue has filed the present appeal against the order dated 02.05.2017 passed by the Commissioner of Income Tax (Appeals)-52, Mumbai (hereinafter referred to as the "CIT(A)") relevant to the assessment year 2010-11 in which the penalty levied by the AO has been ordered to be deleted.

3. The revenue has raised the following grounds: -

> *''1. "On the facts and in the circumstances of the case and in law, Ld. CJT(A) erred in deleting the penalty u/s 271(1)(c) on the amount of Rs.1,99,94,876/- being income on account of sponsorship rights which assessee had failed to offer as income in the return of income tantamounting to filing of inaccurate particulars and conscious attempt to evade taxes by furnishing inaccurate particulars of income"*
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> *2. "On the facts and in the circumstances of the case and in law, L4. CIT(A) erred in deleting the penalty u/s 271(1)(c) on the amount of Rs. 16,89,52,500/-, being franchise fee claimed by the assessee as revenue expenditure without establishing as to how it was revenue expenditure and, thereby, furnished inaccurate particulars and made a conscious attempt to evade taxes by furnishing inaccurate particulars of income"*
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> *3. "On the facts and in the circumstances of the case and in law, IA. CIT(A) erred in deleting the penalty u/s 271(1)(c) on the addition made on account of disallowance of airfare, travelling expenses, lodging & boarding expenses etc. when the assessee had failed to prove that expenditure incurred had resulted in increase of sale etc. and, therefore, the assessee had furnished inaccurate particulars and made a conscious attempt to evade taxes by furnishing inaccurate particulars of income."*
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> *4. "On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in deleting the penalty u/s 271 (1)(c), when the assessee during the course of penalty proceedings had failed to establish the bonafides of the amounts and its claim relating to sponsorship rights income not offered as income, franchisee fee claimed as revenue*

expenditure and airfare, travelling expenses and lodging expenses etc disallowed as revenue expenditure"

5. 'The appellant craves, leave to add, to amend and / or to alter any of the grounds of appeal, if need be."

The appellant, therefore, prays that on the grounds stated above, the order of the Ld. CIT(A)-52, Mumbai may be set aside and that of the Assessing Officer be restored."

4. The brief facts of the case are that the assessee filed its return of income on 13.10.2010 declaring total loss to the tune of Rs.86,67,016/- for the A.Y. 2010-11. The assessee revised its return of income on 29.12.2010 incorporating the brought forward losses for A.Y.2008-09 and A.Y.2009-10. Thereafter, assessment was completed u/s 143(3) of the Act on 28.03.2013 determining the total income to the tune of Rs.26,69,88,340/-. On verification, the AO noticed that the revenue recognition policy of the assessee company was only 7 out of 14 matches i.e. 50% of the matches for the season played for the current financial year. The assessee company should have offered 50% of the income received from sponsorship right but it was seen that the assessee company has shown income of Rs.16,45,21,911/- for the year consideration on account of Sponsorship Rights instead of Rs.18,45,16,787/- (50% of Rs.36,90,33,574/-). Accordingly, the AO raised the addition of Rs.1,99,94,876/- (Rs.18,45,16,787/- - Rs.16,45,21,911/-). The penalty proceeding was also initiated. Secondly, the AO disallowed the 50% of the total expenses on account of Advertisement & Publicity, Coaching Staff Retainer Ship Fees, Merchandise Cost and Costume Cost in sum of Rs.75,14,494/- being excess claimed as an expenses and added to the income of the assessee. The penalty proceeding was also initiated. Thirdly, the assessee has shown the

Franchisee Fee's amounting to Rs.30.03 crores which was treated as capital expenditure and after the allowing depreciation @ 25%, an amount of Rs.16,89,52,500/- was added to the income of the assessee. The penalty proceeding was also initiated. Fourthly, the assessee claimed the expenditure incurred for feasibility study expenses amounting to Rs.19,32,700/- but the AO held as capital in nature and allowed 1/5thof the total expenditure in sum of Rs.4,83,180/- and the penalty proceeding was also initiated. Fifthly, the assessee also claimed the stamp duty expenses amounting to Rs.2,75,010/- on account of shares transferred from Red Chillies Entertainment Pvt. Ltd. to Shahrukh Khan and Gauri Khan jointly. The said expenses were treated as capital in nature and added to the income of the assessee. The penalty proceeding was also initiated. Sixthly, the assessee also claimed the expenses on account of Travelling Expenses and Vehicle Expenses of Rs.42,28,459/- and Airfare expenses of Rs.2,86,23,482/-. The AO disallowed 25% of these expenses i.e. Rs.82,12,985/- which might not be incurred exclusively for the purpose of the business. The penalty proceeding was also initiated. Seventhly, the assessee has incurred Website Design Charges of Rs.61,77,358/- which was also treated as capital in nature and after the allowing depreciation @ 60%, an amount of Rs.24,70,943/- was added to the income of the assessee. The penalty proceeding was also initiated. Eighthly, the assessee company has claimed Food and Nutrition Expenses at Rs.17,36,971/- and Loading and Boarding Expenses at Rs.2,94,45,922/-. The assessee also claimed the expenses of Rs.7154,259/- on account of Partying Bill, Room Bill amounting to Rs.51,74,972/- approximately 33% has been incurred for Celebrities, VIPs, Relative of the Directors etc. Since the partying cannot

be termed and allowed as a business expenditure, therefore, the AO disallowed a sum of Rs.71,54,259/- on account of partying bill and Rs.17,07,741/- on account of Room Bill and Rs.62,61,708/- on account of Food and Nutrition expenses total to Rs.1,50,83,708/-. The penalty proceeding was also initiated. The assessee filed an appeal before the CIT(A) who confirmed the addition to the extent of 20,96,58,445/- on account of various expenses, depreciation and processing of central rights. Thereafter, the penalty proceeding was initiated and after the reply of the assessee, penalty in sum of Rs.7,12,62,905/- was levied which was the 100% disallowance of the claim. The CIT(A) has deleted the penalty partly. Feeling aggrieved, the revenue has filed the present appeal before us. The assessee has also filed the appeal before us for sustaining the remaining penalty.

ISSUE NO.1

8. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. Under this issue the revenue has challenged the deletion of penalty raised on account of Sponsorship rights income of Rs.1,99,94,876/-. The Ld. Representative of the revenue has argued that the CIT(A) has wrongly deleted the penalty, hence, the finding of the CIT(A) is not justifiable and is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. The contention of the assessee is that the assessee had entered into sponsorship agreement with various companies like Coca-cola, Nokia, Wrigley, etc. which were entered for the period of one year. According to the sponsorship agreement, the Assessee

was obliged to advertise the brand or product of the sponsor during the course of IPL season and also obliged to attend events for promotion of the sponsor, brands or the products which were held before the IPL season begins and even after the end of the IPL season. The Assessee estimated the 90% of income attributable to the advertising to be carried out during the IPL season and estimated the 10% of the such income attributable to the participant in the events held during the term of the contract. The 10% sponsorship income was offered on pro-rata basis over the term of the contract on the basis of the accounting policy. The appellant offered of Rs.16,45,21,911/- to tax in the year under consideration. According to the AO, the 50% of the matches were played in the A.Y.2010-11, hence, the 50% sponsorship income i.e. 18,45,16,787/- was taxable in the A.Y.2010-11. Accordingly, the AO raised the addition in sum of Rs.1,99,94,876/-. The said addition was confirmed by CIT(A) as well as by Tribunal. The AO has applied his own method of taxing the 50% of the sponsorship income and by not admitting the method of assessee. These circumstances nowhere leads to penalty in view of the decision in the case of **Hon'ble Bombay High Court in the case of CIT Vs. Denandas Perumal & Co. (140 ITR 943) P & H High Court in the case of Harigopal Singh Vs. CIT (258 ITR 85) and Delhi High Court in case of CIT Vs. Aero Traders Pvt. Ltd. (322 ITR 316).** AO raised the addition of 50% in the year by not admitting the claim of Assessee so the penalty is not leviable in this case also because there is no concealment of income and furnishing the inaccurate particulars of income. In this regard, we also find support of law mentioned above. Moreover, we noticed that the tax chargeable in the A.Y.2010-11 & 2011-12 is same and the addition raised by AO has become

revenue neutral so no penalty is sustainable in the eyes of law in view of the decision of Hon'ble Bombay High Court in the case of **CIT Vs. Nagri Mills Co. Ltd. 33 ITR 681**. Moreover, the claim has not been accepted by AO so there is no concealment of income nor furnishing the inaccurate particulars of income so penalty is not liable to be sustainable in the eyes of law. In this regard we also find support of law settled by the Hon'ble Supreme Court in the case of **CIT Vs. Reliance Petro Products Pvt. Ltd. 322 ITR 158**. Taking into account all the facts and circumstances, we are of the view that that the finding of the CIT(A) is justifiable and we affirm the finding of the CIT(A) and decide this issue in favour of the assessee against the revenue.

ISSUE NO. 2

5. Under this issue the revenue has challenged the deletion of penalty by the CIT(A) on ad hoc disallowance of Rs.1,02,90,354/- relating to Food, Nutrition, Lodging, Boarding amounting to Rs.82,12,985/- related to Airfare, Travelling and Vehicle hire charges. The CIT(A) has confirmed the quantum. Thereafter the AO initiated the penalty and also levied the penalty on the said disallowance. The appeal came before the Hon'ble ITAT for the A.Y.2010-11 bearing ITA. No.4087/M/2014 for the A.Y.2010-11 which was decided on12.12.2018 in which the expenses has been treated as business expenses and remanded before the AO for verification purpose. The relevant para is hereby reproduced as under.:-

> *"24. Ground No. 9 & 10 relates to Adhoc disallowance of airfare expense, travelling expense and vehicle hire charges. The ld. AR of the assessee submits similar ground of appeal in appeal for A.Y. 2009-10 have been restored to the file of Assessing Officer for verification of*

documentary evidences. The ld. AR of the assessee further submits that there are sufficient documentary evidences on record for the year under consideration as per page 209 to 261 of the Paper Book. Therefore, these grounds of appeal should be allowed.

25.On the other hand, the ld. DR for the Revenue supported the order of lower authorities.

26.We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that the assessee has raised similar ground of appeal in appeal for A.Y. 2009-10 and the Tribunal restored the issues to the file of Assessing Officer with the following direction: 56. We shall now take up the disallowance of a sum of Rs.95,63,132/- (i.e 25% of Rs.3,82,52,527/-) being expenditure incurred in connection with airfare expenses, travelling expense ad vehicle hire charges. We find that the A.O holding a conviction that as the assessee had incurred expenses on food and stay of VIPs and celebrities, therefore, the airfare expenses of Rs.3,28,96,505/-, travelling expenses of Rs.12,66,462/- and vehicle hire charges of Rs.40,89,560/- must also be including expenses incurred on VIPs and celebrities. The A.O on the basis of his aforesaid conviction thus carried out an adhoc disallowance of the expenses, viz. (i). Rs.82,25,126/- out of airfare expenses; (ii). Rs.3,16,616/- out of travelling expenses ; and (ii). Rs.10,22,390/- out of vehicle hire charges, as a result whereof a total disallowance of Rs.95,63,132/-was made by him. We find that the assessee had claimed that during the course of the assessment proceedings documentary evidence supporting the aforesaid expenses incurred by it were furnished with the A.O. However, the CIT(A) while upholding the adhoc disallowance made by the A.O observed that the assessee had failed to produce before him any evidence, viz. air tickets, details of vehicles, name of service providers, persons utilizing the services and their nexus with the business of the assessee. We find that a perusal of the assessment order reveals that an adhoc disallowance of the aforementioned expenses was carried out by the A.O not for the reason that the assessee had failed to substantiate the genuineness and veracity of the expenses, but rather, for the reason that as per him now when the assessee had incurred expenses towards food, boarding and lodging for the actors, celebrities, VIP's etc., therefore, it would also have incurred airfare expenses, travelling expenses and vehicle charges in respect of the said persons. We find that the CIT(A) observing that the assessee had not placed before him any evidence, e.g air tickets, details of vehicle, name of service providers, persons utilizing these services and their nexus with business etc, therefore, concluded that the possibility of the expenditure being partly for non business purposes could not be ruled out. Thus the CIT(A) on the aforesaid reasoning had upheld the

disallowance of the aforesaid expenditure made by the A.O. We have given a thoughtful consideration to the issue before us and are of the considered view that as observed by us hereinabove, the expenses incurred by the assessee on the actors, celebrities and VIPs in order to facilitate marking their presence at the matches, which substantially contributed towards generation of higher revenue in the hands of the assessee by way of pushing ticketing sales and higher sponsorship receipts, can safely be held to have been incurred wholly and exclusively for the purpose of the business of the assessee. We thus are of the view that expenses incurred towards airfare expenses, travelling expense and vehicle hire charges by the assessee in respect of the such persons cannot be divorced from the business of the assessee, and has to be held as an expenditure incurred by the assessee in the course of his business of cricketing. We are unable to persuade ourselves to subscribe to the observations of the A.O who had carried out an adhoc disallowance of 25% of the expenses, for the reason that the assessee must had incurred the expenses on such persons, viz. actors, celebrities, VIPs, which could not be held as an expenditure incurred wholly and exclusively for the purpose of its business. We are of the considered view that if the A.O had that strong a conviction that the aforesaid expenses incurred on the aforesaid persons were in no way in context of the business of the assessee, or were in the nature of its personal expense, then he remained under a statutory obligation to have specifically demonstrated the same by referring to the expenses booked by the assessee in its books of accounts. However, we find that the CIT(A) had taken a shift for sustaining the said disallowance and had observed that as the assessee had not produced before him any evidence, viz. air tickets, details of vehicles, name of service providers, persons utilizing these services and their nexus with the business etc., therefore, the possibility of the expenditure partly having been for non business purposes could not be ruled out. We further find that the assessee also had averred before us that it was not given an opportunity of being heard by the A.O while making an adhoc disallowance of the aforesaid expenses. We have given a thoughtful consideration to the issue before us, and as observed by us hereinabove, are of the considered view that the observations of the A.O that an adhoc disallowance of airfare expenses, travelling expenses and vehicle hiring expenses was called for in the hands of the assessee for the reason that expenses under the said respective heads must had been incurred by the assessee in respect of actors, celebrities, and VIPs, cannot be sustained. However, keeping in view the fact that as observed by the CIT(A) that the assessee had failed to place before him any evidence e.g air tickets, details of vehicles, name of service providers, details of persons utilizing these services and their nexus with business etc, therefore, as per him the possibility of the expenditure partly having been incurred for non business purposes could not be ruled out, and the

fact that the assessee too had submitted before us that sufficient opportunity was not allowed to it at the time when such adhoc disallowance of expenses was made, therefore, in all fairness restore the matter to the file of the A.O for making necessary verifications on the basis of documentary evidence as regards the entitlement of the assessee towards the claim of the aforesaid expenses. We herein direct that the A.O shall in the backdrop of our aforesaid observations make necessary verifications as regards the aforesaid claim of expense of the assessee booked under the said respective heads, viz. airfare expenses, travelling expenses and vehicle hiring charges. Needles to say, the A.O shall during the course of the set aside proceedings afford sufficient opportunity of being of heard to the assessee, who shall remain at a liberty to substantiate its claim by placing on record fresh documentary evidence. However, we may herein clarify that in case the A.O in the course of the set aside proceedings is not satisfied with the documentary evidence and submissions of the assessee in support of its claim of the aforesaid expenses, then he though would be at a liberty to disallow the same, but however, the said disallowance shall not exceed that made by him towards the respective expenses while passing the original assessment order. The Ground of appeal No. 11 to 13 are allowed for statistical purposes in terms of our aforesaid observations

27. Considering the decision of the Tribunal for assessment year 2009-10, these grounds of appeal is also restored to the file of assessing officer with the similar directions to verify the documentary evidences and grant appropriate relief to the assessee in accordance with law. Needless to direct that before passing the order the assessing officer shall grant opportunity of hearing to the assessee. The contention of the ld. AR for the assessee that the assessee has placed sufficient evidences on record and appropriate relief be allowed to the assessee. We are not inclined to accept such prayer of assessee, let all the evidence be examined by the assessing officer in accordance with law. In the result these grounds of appeal are allowed for statistical purpose. 28.Ground No. 11 & 12 relates to disallowance of (a) Lodging and Boarding and (b) Food and Nutrition. The ld AR for the assessee submits that these grounds of appeals are also covered in favour of the assessee and against the revenue by the decision of the Tribunal in assessee's own case for assessment year 2009-10, wherein the similar grounds of appeal was restored to the file of the assessing officer for verification of evidences, however, for the year under consideration the assessee has file sufficient evidences as per page No. 262 to 270 of the Paper Book. The ld AR for the assessee submits that the assessee be allowed full relief as the assessee has furnished complete evidences.

29. On the other hand the ld. DR for the revenue supported the order of thr authorities below. 30.We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that the assessee has raised similar ground of appeal in appeal for A.Y. 2009-10 and the ITA No. 4087 & 4310 Mum 2014-M/s Knight Riders Sports Pvt. Ltd. 22 Tribunal restored the issues to the file of Assessing Officer with the following direction: 54. We now advert to the disallowance by the A.O of the expenses which were claimed by the assessee in its profit and loss account for the year under consideration, which thereafter had been sustained by the CIT(A), viz. (i) out of food and nutrition expenses: Rs.58,53,575/-; and (ii) out of boarding and lodging expenses of Rs.1,90,16,944/-. We find that as per the A.O the information gathered during the course of survey proceedings conducted under Sec. 133A on 21.04.2010 at the office premise of the assessee at Eden Garden, Calcutta, revealed that the assessee had incurred an expenditure of Rs.1,35,46,255/- (room billing: Rs. 96,25,375/- and partying bill: Rs.39,19,880/-) at ITC, sonar, Kolkata. We find that the A.O had carried out disallowance of the partying expenditure of Rs.39,19,880/- by observing that the parties hosted by the assessee at ITC sonar, Kolkata included various relatives of directors, VIPs and celebrities, which thus could not be held as a business expenditure. The A.O further holding a conviction that the room booking charges of Rs.96,26,375/- incurred by the assessee for rooms taken on hire at ITC, sonar, Kolkata were also to some extent incurred by the assessee for the stay of relatives of directors, VIPs and celebrities, therefore, on the said count had on an estimate basis disallowed 33% of such expenses and made an addition of Rs.31,76,705/-. That as regards the balance expenditure of Rs.1,13,24,264/- (i.e. excluding expenditure incurred at ITC, sonar, Kolkata), the A.O had on a similar analogy carried out an estimated disallowance of 33% of the said expenses and made a further addition of Rs.37,37,007/-. We thus find that on the basis of his aforesaid observations the A.O had carried out an aggregate disallowance of Rs.1,08,33,592/- out of the food and nutrition and boarding and lodging expenses claimed by the assessee. 55. We have deliberated on the observations of the lower authorities, and find that the primary reason which had weighed in the mind of the A.O while making the disallowance of expenses booked by the assessee under the head food and nutrition expenses and boarding and lodging expenses, was that the information gathered during the course of the survey proceedings conducted under Sec. 133A on 21.04.2010 at the office premises of the assessee at Eden Garden, Calcutta, revealed that the parties hosted by the assessee included various relatives of directors, VIPs and celebrities as invitees. We find that the A.O had disallowed the entire partying expenditure of Rs.39,19,880/-incurred by the assessee at ITC, sonar, Kolkata, as well as disallowed 33% of the room expenses of Rs.96,26,375/- incurred by the

assessee on booking of rooms at ITC, sonar, Kolkata, and a further disallowance of 33% of the balance expenditure of Rs.1,13,24,264/-. We find substantial force in the contention of the ld. A.R that the aforesaid expenses were incurred by the assessee in the course of operating its teams, wherein the visiting teams alongwith people from show business, actors, celebrities, VIPs etc, were invited for the matches for the purpose of increasing the viewing of the matches, which thus consequently led to increase in sale of tickets and generation of higher amount of sponsorship fees. We have deliberated on the contentions raised by the authorized representatives for both the parties and the material available on record. We are of the considered view that it remains as a matter of fact that the game of cricket, unlike in the past, as on date had been highly commercialized. We find that the main source of income of an IPL franchisee from hosting of the cricket matches is from ticketing and receipt of sponsorships by staging the cricket matches. We are of the considered view that it remains no hidden a fact that in order to boost the ticket sales and to receive higher sponsorships the franchisees of the IPL teams leave no stone unturned, and to lure the public for buying tickets, invite actors, celebrities, VIPs etc. during the matches. We find substantial force in the contention of the ld. A.R that this is the way the assessee operates its team and carries out its business. We cannot remain oblivious of the factual reality as regards the strategical planning in the business of cricketing, and are of the considered view that now when the actors, celebrities, VIPs etc., pursuant to invitations by the franchisee, mark their presence in the matches, the same leads to substantial push to ticketing sales and higher sponsorship receipts. We are of the considered view that the visits of the actors, celebrities, VIP's etc. at the matches staged is strategically planned by the franchisees, which carries with it the obligation and responsibility of providing boarding, lodging, food etc. to the level of their standard. We are further of the view that the marking of presence by the actors, celebrities, VIPs etc. at the matches is strategically planned and is guided by the business prudence of the franchisee, knowing well that the same would both boost the sales of tickets as more of viewers would be attracted for such matches, as well as give a substantial push to the sponsorship receipts from the business houses. We would not hesitate to observe that keeping in view the commercialization of the game of cricket, it would not be wrong to conclude that even if the assessee would have arranged paid visits of the actors, celebrities, VIPs for the matches, being well conversant with the fact that the same would substantially give a boost to his revenue collections from staging of matches, even the said payments would safely fall within the sweep of an expenditure incurred wholly and exclusively for the purpose of the business. Be that as it may, in the backdrop of our aforesaid observations, we are unable to persuade ourselves to subscribe to the view of the A.O that the expenses incurred

by the assessee towards food and nutrition expenses and boarding and lodging expenses provided to the actors, celebrities and VIPs are liable to be disallowed by characterising them as expenses which could not be held to have been incurred by the assessee wholly and exclusively for its business. We are of the considered view that as the visits of the actors, celebrities and VIPs at the venues where the matches are staged is strategically planned by the assessee in the very interest of its business, therefore, expenses incurred by the assessee by way of providing them food and nutrition or arranging for their stay in hotels can safely be held to be an expenditure incurred in the course of its business. We are further of the view that hosting of parties by the assessee at ITC, sonar Kolkata or at other venues on the days when the matches were played at the home grounds of the assessee, which were attended by the assessee's own team, visiting teams, support staff, directors and invitee guests, which included amongst others actors, celebrities, VIPs who had marked their presence at the matches, can safely be held to be expenditure incurred by the assessee in the very interest of its business. We are of the considered view that the allowability of an expenditure under Sec.37(1) of the Act is required to satisfy the requisite condition contemplated therein, viz. (i) the expenses are not of the nature of the expenses defined in Sec.32 to 36 of the Act; (ii) the expenses are not in the nature of a capital expenditure; (iii) the expenses are not the personal expenses of the assessee; and (iv) the expenses are incurred wholly and exclusively for the purposes of the business of the assessee. We find that in the present case before us the aforesaid requisite conditions had duly been satisfied by the assessee, and as observed by us hereinabove, the expenditure incurred by the assessee on food and nutrition and boarding and lodging incurred in respect of the invitees actors, celebrities and VIPs, being a part of the strategical planning of the assessee to boost its generation of revenues is thus allowable under Sec. 37(1) of the Act. We may herein observe that neither before the lower authorities nor before us it has been established by the revenue that either the expenses claimed by the assessee in respect of the aforesaid persons is found to be bogus, or the said expenditure so incurred on them were not in context of the business of the assessee. We are of the considered view that the aforesaid expenditure incurred by the assessee by hosting dinners on the days on which the matches were played at the home ground, which amongst others were attended by the aforesaid actors, celebrities etc, and arranging for their stay at the hotels of repute, can safely be held as an expenditure incurred by the assessee wholly and exclusively for the purpose of its business. We thus being of the considered view that as the expenditure incurred by the assessee on food and nutrition and boarding and lodging for the members of the team (including visiting teams), support staff, directors and the invited guests, which amongst others included actors, celebrities, VIPs, being in the nature of expenditure

incurred by the assessee in the very interest of its business, therefore, in the absence of any irrefutable documentary evidence which could had established beyond any doubt that the same had been incurred by the assessee either to meet out a personal obligation or was for a purpose which could not be held to be wholly and exclusively for the purpose of the business, therefore, are unable to persuade ourselves to subscribe to the disallowance of the expenses by the A.O for the reason that the parties hosted by the assessee were attended by such actors, celebrities and VIPs, as well as expenditure was incurred towards booking of rooms for their stay in hotels of repute. We are further in agreement with the contention of the ld. A.R who had rightly stated that this is the way the assessee carries out his business, and are of the considered view that as long as the claim of the assessee in respect of the aforesaid expenses satisfied the conditions contemplated under Sec. 37 (1), the entitlement of the assessee cannot be interfered with. However, while perusing the order of the CIT(A) we find that latter had referred to certain bills wherein a clear nexus between the expenditure incurred and the purpose of hosting the parties could not be established, viz. (i) bill of Rs.3,44,410/- for snacks, 300 soft beverages and transport charges, wherein nothing could be gathered from perusing the same about the purpose and persons attending the party; (ii) bill of Rs.5,31,573/-, dated 30.04.2008 which though was raised in favour of IPL ODC for dinner of 400 persons, however, as to how the same was payable by the assessee had remained unexplained; (iii). That certain other bills, viz. bill of Rs.5,31,893/- for 08.05.2008; bill of Rs.5,31,893/- for 13.05.2008; and bill of Rs.5,31,894/- for 20.05.2008, which included dinner, equipment rental, tobacco, etc, but they too did not indicate the purpose and the persons attending the said occasion; (iv). bill of Rs.4,51,900/- which was for 400 snacks, soft drinks, transportation, equipment rental, which did bear a discrepancy, as against the said date the amount mentioned in the submissions by the assessee was Rs.6,83,071/- which could not be reconciled; and (v) bill of Rs.5,31,893/- for 25.05.2008 which was stated to be of Rs.6,69,698/- in the submissions which too could not be reconciled by the assessee. We are of the considered view that in the backdrop of the observations of the CIT(A) that either the assessee had failed to relate the aforesaid bills pertaining to hosting of dinners, tea parties etc., with the purpose for which the same had been incurred, or the same suffered from certain discrepancies as regards the amounts mentioned therein in comparison to those stated by the assessee during the course of the proceedings and had not been reconciled, therefore, in all fairness restore the matter to the file of the A.O for verifying as to whether the aforesaid bills, viz. (i). bill of Rs.5,31,573/-, dated 30.04.2008; (ii) bill of Rs.5,31,893/-, dated 08.05,2008; (iii). bill of Rs.5,31,893/-, dated 13.05.2008; (iv). bill of Rs.5,31,894/-, dated 20,05.2008; (v). bill of Rs.4,51,900/-;and (vi) and bill of Rs.5,31,893/-,

> *dated 25.05.2008 pertained to expenses incurred by the assessee in the course of its business, or not. We may however clarify that the A.O shall while re-adjudicating the aforesaid issue keep in view our aforesaid observations. We thus in the backdrop of our aforesaid observations restore the matter to the file of the A.O for carrying out necessary verifications in respect of the limited issue for which the matter had been restored to his file. Needless to say, the A.O shall while re-adjudicating the aforesaid issue afford sufficient opportunity of being heard to the assessee, who shall remain at a liberty to furnish material and documents to substantiate his claim. The Grounds of appeal No. 9 & 10 are allowed for statistical purpose in terms of our aforesaid purposes.*
>
> *31. Considering the decision of the Tribunal for assessment year 2009-10, these grounds of appeal is also restored to the file of assessing officer with the similar direction. The assessing officer is also directed to follow the direction as contained in para 27.*
>
> *In the result these grounds of appeal are allowed for statistical purpose.*

6. Since the disallowance made by AO has been set aside by Tribunal, therefore, the penalty is not leviable. Moreover the penalty is not liable to be sustainable on adhoc disallowance in view of the decision in case of **Vision Research & Management P. Ltd. 171 TTJ 40**. Moreover, we noticed that the on such type of expenses the Hon'ble ITAT has deleted the penalty for the **A.Y.2009-10 in ITA. No.5587/M/2015 dated 16.04.2018.** Accordingly, no penalty is liable to be sustainable in the eyes of law, hence, We affirm the finding of CIT(A) on this issue.

ISSUE NO.3

7. Under this issue the revenue has challenged the deletion of penalty by the CIT(A) raised on the amount of Rs.16,89,52,500/- being franchise fee claimed by the revenue. We find that the Hon'ble ITAT has allowed the appeal of the assessee and deleted the addition in sum of Rs.16,89,52,500/- being franchise fee. Moreover, on the similar ground, the Hon'ble ITAT

has also deleted the penalty in the assessee's own case for the A.Y.2009-10 in case bearing ITA. No.5587/M/2015 dated 16.04.2018. Further, we find that the assessee raised the claim and disallowance of same is not entitled to levy the penalty in view of the decision in the case of **Indiawin Vs. ACIT in ITA. No.5290 & 5291/M/2014 and Reliance Petroproducts Pvt. Ltd. 322 ITR 158.** Accordingly, we affirm the finding of the CIT(A) and decide this issue in favour of the assessee against the revenue.

ITA. NO.5092/M/2017

8. The assessee has filed the present appeal against the order dated 02.05.2017 passed by the Commissioner of Income Tax (Appeals)-52, Mumbai (hereinafter referred to as the "CIT(A)") relevant to the assessment year 2010-11 in which the penalty levied by the AO has been ordered to be confirmed.

9. The assessee has raised the following grounds: -

> *''General*
> 1. *erred in confirming the levy of penalty under Section 271(l)(c) of the Act amounting to Rs7,50,407 for furnishing inaccurate particulars of income.*
>
> *Revenue expenditure*
>
> 2. *erred in law and in facts in upholding the penalty under Section 271(1)(c) of the Act in respect of additions made for the subject year regarding the following expenses:*
> *expenses incurred in connection with conducting feasibility study; and*
> *stamp duty expenses*
> *by stating that the above expenses are capital expenditure.*
> 3. *erred in law and facts in holding that claim of expenditure is inadmissible in law and consequently upholding levy of penalty for furnishing inaccurate particulars of income.*
>
> *Full and true disclosure*

4. erred in confirming the levy of penalty without appreciating that the Appellant had made full and true disclosure at the time of filing the return of income and during the course of the assessment/appellate proceedings.

Mere non-acceptance of claim of expenses

5. erred in confirming the levy of penalty without appreciating that the entire expenditure incurred by the Appellant is an allowable expenditure under the Act and merely because a claim is not accepted. it does not amount to furnishing of inaccurate particulars of income.

Mere difference of legal interpretation does not warrant action under Section 271(1)(c) of the Act, where here two views are possible

6. erred in not appreciating that the stand adopted by the Appellant was based on interpretation of the Act and judicial precedents.

7. erred in confirming the levy of penalty for furnishing inaccurate particulars of income, where the issue is debatable/two opinions are possible.

Penalty Proceeding are separate from assessment proceedings.

8. erred in not appreciating that penalty proceedings are separate from assessment proceedings.

Based on the above, the appellant prays that no penalty should be levied under section 271(1)(c) of the Act, in the appellant's case. Accordingly, the appellant prays that the AO should be directed to delete the penalty levied under section 271(1)(c) of the Act.

The appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, to alter, delete or modify all or any of the above grounds of appeal at or before the hearing of the appeal, to decide the appeal according to law.''

10. All the issues are in connection with the confirmation of the penalty on the disallowance of Rs.7,50,407/- of expenses incurred in connection with conducting feasibility study and stamp duty expenses by stating the same as capital in nature. The Ld. Representative of the assessee has argued that the addition on account of feasibility study expenses and stamp duty expenses has been deleted by Hon'ble Tribunal in the assessee's own case

bearing ITA. No. 4087/M/2014 for the A.Y.2010-11 decided on12.12.2018, therefore, no penalty is liable to be sustainable in the eyes of law. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. The copy of order dated 12.12.2018 is on the file in which we noticed that the addition raised on account of feasibility study expenses and stamp duty expenses has been ordered to be deleted. The relevant paras are hereby reproduced as under.:-

> *''17.Ground No. 6 & 7 relates to Feasibility study expense. The ld. AR of the assessee submits that Feasibility study expenses incurred by the assessee are related with the business expenses. There is no allegation of lower authorities that it was not for the business purpose. The ld. AR of the assessee further submits that after IPL Season 2008, the assessee deliberate that since annual cost hiring of Stadium under by Greater Association of Bengal is substantially high, it may be cost efficient to complete own and manage cricket Stadium in Eastern India, catchment area for home matches of assessee. The Stadium used by assessee was State Government Stadium and assessee was unable to improve as the requirement and standard of IPL, therefore, management was exploringthe potential and feasibility of new entertainment focus multi-use Stadium. During the relevant period, the assessee identified a scene in Hawara across Hugly river and the professional like Hok Sports & Venue & Event Pvt. Ltd. a Singapore based company, appointed to undertake feasibility study to establish the potential of the new location of the proposed site. The assessee incurred expenses of Rs. 24,15,900/- for the professional services rendered by those professional. During the assessment, the assessee provided the details of ledger account along with detail factual and legal submission. The study expenses are revenue in nature, neither new business or new asset or enduring the benefit came into existence as a result of feasibility study. The Assessing Officer allowed only 1/5th of the expenses. The assessee is entitled for the entire expenditure. In support of his submissions the ld AR for the assessee relied on the decision of Delhi High Court in CIT Vs Priya Village Roadshow Ltd. (2011) 332 ITR 594. 18.On the other hand, the ld. DR for the Revenue supported the order of lower authorities. The ld. DR submits that the case of the assessee is clearly covered by section 35D. 19.We have considered the rival submission of the parties and have gone through the orders of authorities below. The Assessing Officer treated*

the entire expenditure as preliminary expenses and capitalized the same. The Assessing Officer allowed 1/5th of the expenditure in accordance with section 35D, which resulted an addition of Rs. 19,32,720/-. The ld. CIT(A)confirmed the action of Assessing Officer holding that being not unreasonable. We have noted that there is no dispute about the expenses incurred by the assessee. There is no dispute that lower authorities have not disputed the cost of the expenses. We have noted that the lower authorities have failed to specify as to how the case of assessee is covered under section 35D, when no new stadium was made was assessee. The assessee has incurred the preliminary expenses for feasibility expenses. It is an undisputed fact that ultimately the assessee abundant the idea of construction of new Stadium. As neither the scheme nor the idea of assessee was materialized or no new unit/ stadium was made, therefore, the assessee is entitled for deduction of entire expenditure incurred on such feasibility report as revenue expenditure Similar view was express by Hon'ble Delhi High Court in CIT Vs Priya Village Roadshaw (supra). 20.In the result, ground no. 6 & 7 of appeal are allowed.

21.Ground No. 8 relates to Stamp duty expenses. The ld. AR of the assessee submits that the expenses incurred by assessee on stamp duty expenses paid on various agreements are purely a revenue expenses. The Assessing Officer treated the expenditure as capital in nature.

22.On the other hand, the ld. DR for the Revenue supported the order of lower authorities. The ld. DR for the revenue submits that expenses were not incurred for the purpose of business of the assessee."

11. Since the addition has been deleted by Hon'ble ITAT, therefore, the penalty has no legs to stand, hence, we delete the penalty.

12. In result, appeal filed by the revenue is hereby dismissed and appeal filed by the assessee is hereby ordered to be allowed.

Order pronounced in the open court on 06/03/2020

Sd/	Sd/-
(M. BALAGANESH)	**(AMARJIT SINGH)**
लेखासदस्य / ACCOUNTANT MEMBER	**न्यायिकसदस्य/JUDICIAL MEMBER**

मुंबई Mumbai; दिनांकDated : 06/03/2020

Vijay Pal Singh/Sr. P.S.

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

(Assistant Registrar)
आयकरअपीलीयअधिकरण, मुंबई **/ ITAT, Mumbai**