IN THE INCOME TAX APPELLATE TRIBUNAL"C" BENCH, MUMBAI
BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

I.T.A. Nos. 59 & 60/Mum/2019
(Assessment Years: 2013-14 & 2014-15)

Dy. Commissioner of Income Tax, Central Circle-6(2) Room No.1903, 19th Floor Air India Building, Nariman Point, Mumbai-400021.	Vs.	M/s. Indiawin Sports Pvt. Ltd. 3rd Floor, Court House, Lokmanya Tilak Marg, Dhobi Talao, Mumbai-400002.

I.T.A. Nos.230 & 231/Mum/2019
(Assessment Years: 2013-14 & 2014-15)

M/s. Indiawin Sports Pvt. Ltd. 3rd Floor, Court House, Lokmanya Tilak Marg, Dhobi Talao, Mumbai-400002.	Vs.	Dy. Commissioner of Income Tax, Central Circle-6(2) Room No.1903, 19th Floor Air India Building, Nariman Point, Mumbai-400021.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. : AADCR8195F		
(Appellant)	..	**(Respondent)**

Revenue by:	Shri V. Sreekar (DR)
Assessee by:	Shri Nimesh Vora (AR)

Date of Hearing: 16/01/2020
Date of Pronouncement: 06/03/2020

O R D E R

PER BENCH:

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

Income Tax (Appeals)-54, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment years 2013-14 & 2014-15.

ITA. NO. 230/Mum/2019

2. The assessee has filed the present appeal against the order dated 24.10.2018 passed by the Commissioner of Income Tax (Appeals)-54, Mumbai (hereinafter referred to as the "CIT(A)") relevant to the assessment year 2013-14.

3. The assessee has raised the following grounds: -

> *"1. The Ld. CIT(A-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.5,35,322/- being travelling expenses incurred for accompanying 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 and are not incurred for business purpose.*
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> *2. The appellant craves leave to add, to amend, vary or alter including by substitution any of the grounds of appeals as they or their representatives may think fit."*

4. The brief facts of the case are that the assessee filed its return of income on 26.09.2013 declaring total loss to the tune of Rs.4,71,03,802/- for the A.Y. 2013-14. The return was processed u/s 143(1) of the I.T. Act, 1961. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is a company engaged in the business of owning, managing and operating the Mumbai Team (popular name "Mumbai Indians") of the Indian Premier League. The Indian Premier

League (IPL) in which the assessee was a franchisee holder, was an Indian Twenty-20 cricket championship league launched in 2008. It was formed as a sub-committee of BCCI, with a separate governing council managing its affairs. There were originally eight teams in IPL each comprising of 16 players. Since IPL was an initiative of the Board for Control of Cricket in India (BCCI) and endorsed by ICC, it could auction media rights, sponsorship rights etc. for substantial considerations. The revenue was also generated from ticketing, gate money and other events hosted by the franchisees. Out of central revenue pool 80% was distributed among the franchisee team owners and 20% goes to BCCI-IPL pool. The Mumbai Indian Team was bought in the original auction by M/s. Indiawin Sports Pvt. Ltd. (a Reliance Industries Ltd. Group Company) for Rs.441 crores. Funding has been done by RIL through its 100% subsidiary viz. Reliance Industrial Investment Holding Ltd. (RILHL). The franchisee agreement was signed between BCCI-IPL and Rathipriya Trading Pvt. Ltd. (subsequently named as M/s. Indiawin Sports Pvt. Ltd.) The major share holders in the assessee company was (a) Reliance Industries Investments & Holding Ltd. -98.3% (b) Teesta Retails Pvt. Ltd. -1.69%. The assessee claimed the franchisee fees in sum of Rs.44.76 crores paid to BCCI which was revenue expenditure, Travelling Expenses incurred for family members for players in sum of Rs.5,35,322/- which was declined and Hospitality Expenditure in sum of Rs.44,83,600/- was also declined and the total income was

assessed to the tune of Rs.8,36,65,750/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who partly allowed the appeal of the assessee but disallowed the claim of the expenses incurred for family members for players in sum of Rs.5,35,322/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the addition, therefore, the assessee has filed the present appeal before us.

5. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. At the very outset, the Ld. Representative of the assessee has argued that this issue is covered against the assessee in view of the decision of Hon'ble ITAT in the assessee's own case for the A.Y. 2011-12 bearing ITA. No.5812/Mum/2016 dated 20.09.2017 and on the basis of decision by Hon'ble ITAT in the asseess's own case for the A.Y.2012-13 bearing ITA. No.5813/Mum/2016 dated 13.02.2019. The copy of order in the assessee's own case bearing ITA. No.5812/Mum/2016 dated 20.09.2017 is on the file in which relevant finding has been given in para no.4 to 5 which are hereby reproduced as under.:-

> *"4. We have heard the counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the revenue in para no. 7 of its order. The operative portion of the order of Ld. CIT(A) is contained in para no. 7.4 of its order and the same is reproduced below:-*

7.4 Decision

7.4.1 I have considered the submissions of the appellant and perused the materials available on record. The appellant has requested to delete the impugned disallowance of Rs. 62,935/- being expenses incurred on travelling of spouses/family members of the players. obliged to incur any expenditure for the spouses or family members of the players. In absence of such contractual liability the impugned expenses under consideration incurred for the spouses/family members of the players cannot be held to have been incurred for business purposes. In view of the facts and circumstances of the case, it is held that the learned AO was justified in treating the impugned expenses incurred for travelling of spouses and family members of players as not incurred for business purposes and hence ineligible for allowance. Hence the impugned disallowance made at Rs. 62,935/- is CONFIRMED. Accordingly, the Ground No. 2 raised in appeal is DISMISSED.

5. After having gone through the facts of the present case as well as considering orders passed by revenue authorities and judgment relied upon by the parties, we find that no evidence has been led by the assessee to substantiate the claim that the presence of spouse/family members attracts sponsors or how it is related to business of the assessee. Even in the agreement, it is no where provided that it will be the liability of the assessee to incur travelling or other expenses for the spouse or family members of the players. Thus assessee was not contractually obliged to incur any expenditure for spouses or family members of the players.

The Ld. CIT(A) has dealt with the above grounds after considering the facts of the present case. No new facts have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT (A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld. CIT (A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, this ground raised by the assessee stands dismissed."

6. The copy of order in the assessee's own case bearing ITA. No.5813/Mum/2016 dated 13.02.2019 is also on the file in which the relevant finding has been given in para no. 19 which is hereby reproduced as under.:-

> *"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. Since the issue in question is covered against the assessee in the assessee's own case for the A.y.2011-12 & 2012-13(supra), therefore, this issue is decided against the assessee and in favour of the revenue.

In the result, appeal filed by the Assessee is hereby dismissed.

ITA. NO.59/Mum/2019

8. The revenue has filed the present appeal against the order dated 24.10.2018 passed by the Commissioner of Income Tax (Appeals)-54, Mumbai (hereinafter referred to as the "CIT(A)") relevant to the assessment year 2013-14.

9. The revenue has raised the 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 Revenue in nature.*
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> *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.50,06,281/- being 10% of the Hospitality expenses of Rs.5,00,62,814/- by holding that the same is related to assessee 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."

10. The brief facts of the case are similar to the facts as narrated above while deciding in ITA. No.230/Mum/2019, therefore, there is no need to repeat the same.

ISSUE Nos. 1 & 2

11. Under these issues the revenue has challenged the deletion of the disallowance of Rs.44.76 crores being franchise fees paid to BCCI to participate in the IPL by holding the same as revenue in nature. At the very outset, the Ld. Representative of the assessee has argued that the CIT(A) has allowed the claim of the assessee on the basis of decision of Hon'ble ITAT in the assessee's own case for the A.Y.2009-10, 2010-11, 2011-12 & 2012-13 in ITA. Nos. 5290/Mum/2014 & 5291/Mum/2014 dated 22.07.2016 and ITA. No. 6261Mum/2016 dated 28.04.2017 an ITA. No. 5813/Mum/2016 dated13.02.2019 respectively. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

"5.*4 The submission of the Ld. Counsel have been carefully considered. This is a recurring issue in the appellant's own case from AYs. 2009-10*

onwards. TheHon'ble ITAT, Mumbai, while deciding the issue for AYs. 2009-10 and 2010-11 held as under:

'3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in the business of owning, managing and operating 'Mumbai lndian team of Indian Premier League I TA Nos.5290 & 5291 /1 4 2 (lPL). The assessee has been granted perpetual franchisee for the 'Mumbai Indian' team. The assessee is franchise holder of (FL i.e. Indian Premier League. The IPL is subcommittee of 8CC which manages Twenty-20 format of Cricket in India. The Mumbai Indian team was bought in auction by the assessee for Rs. 441 crores. The Franchise Agreement was signed between SCCI-IPL and M/s. Rathipriya Trading Pvt. Ltd. (old name of the assessee) on 10.04.2008. The assessee filed its return of income u/s. 139(1) for the A.Y. under consideration on 25.09.2009 at a loss of PS. 42.88,55,4661-. Order u1s.143(3) of the Act was passed by the A.O on 30.12.2011 at assessed loss of Rs.7,90,25,6601- after making certain additions additions/disallowances. The AO disallowed claim of deduction of Rs.44.76.00,0001- being annual franchise fees paid by the assessee to the Board of Control for Cricket in India (BCCI) holding the some to be capital in nature.

4. By the impugned order, the 01(A) confirmed the action of AO after observing that payment so made was capita) in nature. The CIT(A) further observed that the AO ought to have allowed depreciation on the cost of rights paid for the year amounting to Rs.44.76 lakhs. Against the above order of 01(A) the assessee is in further appeals before us.

S. 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-1PL as franchisee fees for the (FL and claimed the some 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 BCCJ-f P1 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. Ps. 13.42,80.0001- as

League deposit on or before 2nd Jan and Rs.31,33,20,0001- 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 the franchisee fee. The payment was an annual charge and hence the franchisee fee was claimed as business expenditure. Referring to clauses I. 2 and I) of the said agreement, the assessee has right to operate the Franchise 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 BCC as stipulated in clause 4.1 of the Franchise Agreement. The rights exercised by the assessee are subject to prior decision and acknowledgement of BCC1 as categorically stipulated in clause 4.3 of the agreement. Hence, the assessee was not granted any absolute right but only o limited one.

6. From the record we found that during F.Y. 2007-08 (ie. A.Y. 2008- 09), the assessee has paid Rs.20,00,00,000/- on 20.01.2008 as deposit (which was in terms of clause 7.1 of franchise agreement) for the matches to be held in April, 2008 and the same has been shown as "advances recoverable in cosh or kind of for value to be received" in the audited financial statement of F.Y. 2007-08. During the AY. under consideration, the assessee has paid Rs.24,76,00,000 (net of service tax) on 05.05.2008 (in terms of clause 7.2 of franchise agreement) and debited the aggregate amount of Rs.44,76.00,000/- (i.e. Rs. 20,00,00,000 + Rs. 24,76,00,000/-) under the head "Franchise Fees" in its Profit & Loss account. For the matches to be held in April, 2009, the assessee is said to have paid Rs. 13,37,82.643/- as deposit and grouped the some under the head "Prepaid Expenses" in the Balance Sheet for the year ended 31.03.2009. The expenditure of Rs.44,76,00,000/- incurred by it for making payment of the first instalment to the BCCI-IPL in terms of clause 7 of the agreement was not for the purpose of acquisition of any asset but for on annual right to manage the franchise. The purpose of the expenditure to be incurred under the agreement by the assessee has been stated in clause 6 of the agreement as consideration for the right to operate the Franchise and to be a member of the League. The total expenditure of Rs.44,76.00,000/- payable in yearly instalments of Rs. 44,76,00,000/, for ten years was clearly for the purpose of securing

franchise right from BCCI. Thus payments made by the assessee - were for the annual benefits only not extending beyond one year. Its right to operate and manage the team is subject to prior payment of annual franchise fees: if the assessee foils to make the payment, then it would not be allowed to participate in a Thus, the assessee has made the annual payments to earn the annual income. The nature of transaction/payment clearly demonstrates that the assessee is neither obtaining any enduring benefit by making payment of annual instalment these payments are giving rise to any assets. These payments are mere annual payments to BCC/-/PL to give a right to the assessee to participate in the matches with its team. Therefore, the annual franchise payment was a revenue expenditure.

7. Ld. AR placed on record order of ITAT Hyderabad bench in 1TA No.1043/Hyd/2013, order dated 28-10-2015, passed in the case of Deccan Chargers Sporting Ventures Limited, wherein under similar facts and circumstances it was held that annual franchise fees so paid was revenue in nature.

8. As an alternate it was contended by Id. AR that assessee be allowed depreciation on the cost of intangible assets as contemplated u/s.32(1)(ii) of

Thus, the assessee, in the light of above termination clothe, has not received any enduring benefit by paying annual franchise fees. Though if was granted some rights, but "Central Rights- which are crucial for managing and operating the team, are retained by the BCC, as stipulated in clause 4.1 of the Franchise Agreement. The rights exercised by the assessee are subject to prior decision and acknowledgement of BCC/ as categorically stipulated in clause 4.3 of the agreement. Hence, the assessee was not granted any absolute right but only a limited one.

6. From the record we found that during F.Y. 2007-08 (ie. A.Y. 2008- 09), the assessee has paid Rs.20,00,00,000/- on 20.0/.2008 as deposit (which was in terms of clause 7. I of franchise agreement) for the matches to be held in April, 2008 and the same has been shown as "advances recoverable in cosh or kind of for value to be received" in the audited financial statement of F.Y. 2007-08. During the AY. under consideration, the assessee has paid Rs.24,76,00,000 (net of service tax) on 05.05.2008 (in terms of clause 7.2 of franchise agreement) and debited the aggregate amount of Rs.44,76,00,000/- (i.e. Rs. 20,00,00,000 + Rs. 24,76,00,000F) under the head "Franchise Fees" in its Profit & Loss account. For the matches to be held in April, 2009, the assessee is said to

have paid Rs. 13,37,82,6431- as deposit and grouped the same under the head "Prepaid Expenses- in the Balance Sheet for the year ended 3).03.2009. The expenditure of Rs.44,76,00,000/- incurred by it for making payment of the first instalment to the BCCI-IPL in terms of clause 7 of the agreement was not for the purpose of acquisition of any asset but for an annual right to manage the franchise. The purpose of the expenditure to be incurred under the agreement by the assessee has been stated in clause 6 of the agreement as consideration for the right to operate the Franchise and to be a member of the League. The total expenditure of Rs.44,76,00,000/- payable in yearly instalments of Rs. 44,76,00,000/, for ten years was clearly for the purpose of securing franchise right from BCC. Thus payments made by the assessee - were for the annual benefits only not extending beyond one year. its right to operate and manage the team is subject to prior payment of annual franchise fees; if the assessee fails to make the payment, then it would not be allowed to participate in IPL Thus, the assessee has mode the annual payments to earn the annual income. The nature of transaction/payment clearly demonstrates that the assessee is neither obtaining any enduring benefit by making payment of annual instalment these payments are giving rise to any assets. These payments are mere annual payments to BCCI-IPL to give o right to the assessee to participate in the matches with its team. Therefore, the annual franchise payment was a revenue expenditure.

7. Ld. AR placed on record order of /TAT Hyderabad bench in ITA No.1043/Hyd/2013, order dated 28-10-2015, passed in the case of Deccan Chargers Sporting Ventures Limited, wherein under similar facts and circumstances it was held that annual franchise fees so paid was revenue in nature.

8. As an alternate it was contended by Id. AR that assessee be allowed depreciation on the cost of intangible assets as contemplated u/s.32(1)(ii) of

Rs.447.60 crores. In support of its claim of depreciation on the entire value of intangible assets, Id. AR placed on record order of the coordinate bench in the case of Indian Cements Ltd., (TA No. 1343/Mds/2010, order doted I-1-2016, wherein claim of depreciation u/s.32(1)(ii) was allowed on the entire cost of intangible assets.

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 allowability of deduction, it is necessary to decide whether the aforesaid franchise right is o 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 or 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 (clause 7.1 (b)j is that from and including 2018 onwards, for indefinite period, an amount equal to 20 per cent of the franchisee income received in respect of such year shall be paid to BCCHPL 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 shalt also not sub-let or sub-contract the franchisee rights without prior written permission of the 8CCI-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 BCC/-/PL. Therefore, appellant cannot be regarded as having acquired either wholly or any port 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 ossessee is not a perpetual right and the expenditure paid on yearly basis is revenue expenditure.

6.1. He also analysed various case low 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 rig lit 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 IT!? 316 (sq held that use of patents and designs for ten years with option to extend or renew the some was held to be a revenue expenditure. The ratio is fully applicable to the facts of the present case.

(ii) 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, token 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 Arts (P) Ltd. 254 IT!? 201. following the Apex Court in CIT v. Madras Auto Services Pvt. Ltd, 233 IT!? 468 (sq, has held that upfront payment of future rent for 47 years would still be revenue expenditure.

(iii) 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 not a periodic payment for the actual use of the property (CIT v. Panbari Tea Co. Ltd, 57 IT!? 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. ()24 ITR I (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 pevidas 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 OT(A) who analysed the issue on the given facts. There is no merit in Revenue's grounds and accordingly, Revenue's appeal is dismissed."

Respectfully following the decision of co-ordinate bench on the similar acts, 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 lower authorities and direct the AO to allow assessee's claim of revenue expenditure. As we have already decided ground no.! 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.

7. In the result, both the appeals of assessee are allowed."

The facts are identical for the relevant assessment year, ie. AY. 2013-14. The appellant has paid Rs.44.76 crores to BCCI which is the annual fee payable in two instalments. The appellant, as per the agreement has to pay the franchisee fees in ten instalments spread over ten years. The amount of Rs.44.76 crores is the franchisee fees for AY. 2013-14. As the Hon'ble ITAT, Mumbai, had held that this franchisee fees is in the nature of revenue expenditure, the same has to be allowed as such. The addition made by the Ld. A0 of Rs.44.76 crores is deleted in view of the binding judgement of the Hon'ble ITAT, Mumbai, in the appellant's own case for earlier years on identical facts. My predecessor CIT(A) deleted similar additions for AYs. 2011-12 and 2012-13 following the decision of the Hon'ble ITAT, Mumbai in the appellant's own case. This ground of appeal is Allowed."

12. On appraisal of the above mentioned finding, we noticed that the CIT(A) has allowed the claim of the assessee in connection with the franchisee fees paid to BCCI on the basis of the decision of Hon'ble ITAT in the assessee's own case for the A.Y.2011-12 and 2012-13. The copy of order in the assessee's own case for the A.Y.2009-10 & 2010-11 in ITA. Nos. 5290/Mum/2014 & 5291/Mum/2014 dated 22.07.2016 which is hereby reproduced 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 allowability 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 [clause 7.1 (b)] is that from and including 2018 onwards, for indefinite period, an amount equal to 20 per cent of the 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-IPLonly. 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 rig lit 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 (sq held that use of patents and designs for ten years with 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. (ii) 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 Arts (P) Ltd, 254 ITR 201, following the Apex Court in CIT v. Madras Auto Services Pvt. Ltd, 233 ITR 468 (sq, has held that upfront payment of future rent for 47 years would still be revenue expenditure. (iii) 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 not 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 lower 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."

13. Since the issue is squarely covered by the decision of the Hon'ble ITAT in the assessee's own case for the A.Y.2009-10 & 2010-11 dated 22.07.2016 (supra) and finding no distinguishable material available on record, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, issues nos. 1 & 2 are decided in favour of the assessee against the revenue.

ISSUE Nos. 3 & 4

14. Under these issues the revenue has challenged the deletion of disallowance of Rs.50,06,281/- being 10% of the Hospitality Expenses of Rs.5,00,62,814/-. The Ld. Representative of the assessee has argued that this issue is also covered in the assessee's own case for the A.Y.2010-11 & 2011-12 bearing ITA. Nos. 5290/Mum/2014 & 5291/Mum/2014 dated 22.07.2016. However, the issue is decided in M.A. No.313/Mum/2016 dated 23.08.2017. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

> *"7.3 The submissions of the Id. Counsel have been carefully considered. This is again a recurring issue in the appellants own case which has been decided in the appellant's favour by the Hon'ble ITAT for AY5. 2010-11 and 2011-12. While deciding the issue for AY. 2010-11, the Hon'ble FIAT held as under:*
>
> *"6. Following decisions lay down the ratio that a company being on 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 u1s.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.

1	Sayaji Iron & Engg. Co. (A leading judgment IT ha subsequently been followed by the Mumbai tribunal in various cases as under)	253 ITR 749	Gujarat HC
2	Rainkish Textiles (P)Ltd. Vs. ITO (para 8)	16 taxmann.cam 57	ITAT Mumbai
3	Johnson & Johnson Ltd. Vs ACIT (Para 35)	43 taxmann.com 255	ITAT Mumbai
4	KSS Ltd. (2016) vs DOT (para 6.2)	66 taxmann.com 97	ITAT Mumbai
5	Fairfield Atlas Ltd. Vs. ACIT (para 9)	3 taxmann.com 760	ITAT Mumbai
6	Vieshesh Films (P) Ltd vs. DOT (par() 7)	26 SOT 64	ITAT Mumbai
7	Intersil India Ltd. Vs. AddL. CIT (para 12-16)	101 ITD 85	ITAT Mumbai
8	Markwell Hose Industries (P) Ltd.	95 ITD 271	ITAT Mumbai

7. Respectfully following the propositions laid down in above judicial pronouncements, we do not find any merit for the &allowance of 10% of the hospitality expenses On adhoc basis in the hands of the assessee being a corporate entity/artificial person."

Similar relief has been given by the Hon'ble FIAT for AY. 2011-12, also. In view of the above binding judgement of jurisdictional ITAT in the appellant's own case on identical facts for AYs. 2010-11 and 2011-12, the disallowance made by the Ld. AO of Rs.44,83,600/- is deleted. This ground of appeal is Allowed."

15. Since the issue is squarely covered in the assessee's own case for the A.Y.2010-11 & 2011-12, therefore, this issue is decided in favour of assessee.

ITA. NO. 231/Mum/2019 & ITA. No.60/Mum/2019

16. Since the issue raised in these appeals are also covered by the decision of the assessee as well as revenue appeals bearing ITA. No.230/Mum/2019 & 59/Mum/2019 above respectively, therefore, the finding given above are in quite applicable to these appeals as mutatis

mutandis also. Accordingly, the assessee as well as revenue appeals are hereby ordered to be dismissed.

17. In result, appeals filed by the revenue and filed by the assessee are hereby ordered to be dismissed.

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

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

मुंबई Mumbai; दिनांकDated : 06/03/2020
Vijay Pal Singh/Sr. PS
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//

उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई **/ ITAT, Mumbai**