आयकर अपीलीय अधिकरण

मुंबई पीठ " एच ", मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "H", MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं

श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &

SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER

आअसं. 4389/मुं/2015 (नि.व. 2011-12)

ITA NO.4389/MUM/2015 (A.Y.2011-12)

M/s. Knight Riders Sports Private Limited,
Backstage, Plot No.612, 15th Road,
Junction of Ramakrishna Mission Road,
Santacruz (W), Mumbai 400 054.
PAN: AADCK3118M ..... अपीलार्थी /Appellant

बनाम Vs.

Dy. Commissioner of Income Tax,
Central Circle – 29,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020 ..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by	:	Shri J.D. Mistry, Sr. Advocate with Shri Hitendra Chanda & Ms. Priyanka Minawala
प्रतिवादी द्वारा/Respondent by	:	S/Shri Narendra Singh & Jangapanji

सुनवाई की तिथि/ Date of hearing	:	04/02/2020
घोषणा की तिथि/ Date of pronouncement	:	30/06/2020

<u>आदेश/ ORDER</u>

<u>PER VIKAS AWASTHY, JM:</u>

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) -52 (in short 'the CIT (A)), Mumbai dated 27/04/2015 for the assessment year 2011-12.

2. The brief facts of the case as emanating from records are: The assessee is a 100% subsidiary of Red Chillies Entertainment Pvt. Ltd. The objects of the assessee company amongst others, includes setting up, buying, selling, acquiring, managing, running, operating on outright or in joint-venture or under franchisee or in partnership or under any kind of contract or arrangement for sharing of profits of sports team and sport players, setting up, managing and operating sports academy, promoting developing and managing sports talent, etc. As a part of business, the assessee entered into Franchisee Agreement with BCCI to operate Kolkata Knight Riders (KKR) of BCCI in Indian Premier League (IPL). The assessee entered into IPL, Franchise Agreement with BCCI – IPL on 04.04.2008. The assessee paid annual Franchisee Fee amounting to Rs.30,03,60,000/-. The assessee claimed Franchisee Fee as revenue expenditure. In assessment proceedings, the Assessing Officer held that rights acquired by the assessee on payment of Franchisee Fee are akin to 'Licence' or 'Franchise', u/s 32(1)(ii) of the Income Tax Act, 1961 (herein after referred to as 'the Act') and is an intangible asset. The Assessing Officer concluded that payment of Franchisee Fee is capital in nature. The Assessing Officer allowed depreciation @25% on Franchisee Fee. Apart from above addition, the Assessing Officer in assessment proceedings disallowed certain expenses claimed by the assessee viz. Air fare expenses, travelling expenses, boarding and lodging expenditure, etc. Aggrieved against the assessment order dated 28/03/2014 passed under section 143(3) of the Act, the assessee filed appeal before the CIT(A). The CIT(A) granted part relief to the assesse by allowing some of the expenditures disallowed by the Assessing Officer. However, on the issue of nature of 'Franchisee Fee' i.e. capital vs. revenue and disallowance of air travelling expenditure, boarding and lodging expenditure, the CIT (A) upheld the findings of Assessing Officer. Hence, the present appeal by the assessee.

3. Shri J.D. Mistry, ld. Counsel appearing on behalf of the assessee submitted that ground No.2 to 4 of the appeal are in respect of deduction of franchisee consideration. The primary issue is, whether the 'Franchisee Fee' paid by the assessee is capital or revenue in nature. The ld. Counsel for the assessee submitted that similar question had come up before the Tribunal in assessment year 2009-10 i.e. the first year of assessee's operations. The Tribunal after examining the facts held that Franchise Fee paid in pursuance to

Franchise Agreement dated 04-4-2008 is revenue in nature. The ld. Counsel furnished copy of Tribunal order dated 29/12/2017 in ITA No. 1307/Mum/2013 for AY 2009-10. The Ld. Counsel pointed that in the AY 2010-11, the Tribunal followed the order of AY 2009-10 and decided the issue in favour of the assesse.

The ld. Counsel for the assesse submitted that the Franchise Fee is paid for the calendar year at the beginning of the year in January. Thus, the franchise fee of Rs.30,03,60,000/- paid in January would involve two financial years. January to March Rs.7,50,90,000/-and for April to December Rs.22,52,70,000/-. The Assessing Officer while giving effect to the order of Tribunal for AY 2010-11 disallowed the fee paid for the period January 2009 to March 2009 i.e. Rs.7,50,90,000 on the ground that no claim was made during the year under consideration. The ld. Counsel for the assesse stated at the Bar that deduction of the entire amount paid during the year, if allowed, the asseessee would not file appeal against the Order Giving Effect dated 03/2/2020 for AY 2010-11

4. The ld. Counsel of the assessee contended that in ground No.5 & 6 of the appeal, the assessee has assailed adhoc disallowance of air fare and travel expenses made in an arbitrary manner. An adhoc disallowance was made by the Assessing Officer on the premise that the expenditure is not related to the business and hence, not allowable under section 37(1) of the Act. The assessee had incurred total expenditure of Rs.1,03,85,544/-. The Assessing Officer disallowed 25% of such expenditure without examining the details. The ld. Counsel of the assessee pointed that similar disallowance in respect of air fare and travelling expenses was made in AYs 2009-10 and 2010-11. The Tribunal restored the issue back to the file of Assessing Officer for denovo adjudication. The Assessing Officer while giving effect to the order of Tribunal for assessment year 2010-11 has made adhoc disallowance of Rs.5.00 lacs to cover up the discrepancies. The ld. Counsel for the assessee pointed that in the aforesaid assessment years there were allegation of discrepancy and non-furnishing of documents. The assessee is on a better footing in the assessment year under appeal as there is no allegation of discrepancy or non-furnishing of documents. The AO made disallowance in a mechanical manner without examining the details. The ld. Counsel for the assessee prayed for allowing the assessee's claim in full.

5. In respect of ground No.7 and 8 relating to disallowance of expenditure on boarding and lodging and food, the ld. Counsel for the assessee submitted that the disallowance has been made without verifying the records, in an arbitrary and unjustified manner. No discrepancy is alleged by the Assessing Officer. The assessee claimed expenditure of Rs.1,14,47,456/- on boarding, lodging food, etc. The Assessing Officer made adhoc disallowance of 33%. The ld. Counsel for the assessee pointed that in assessment year 2009-10 similar disallowance was made. The assesse assailed the addition before the Tribunal. The Tribunal vide order dated 12/12/2017 in ITA No.4087/Mum/2014 is restored the issue back to the Assessing Officer for de-novo adjudication.

6. The ld. Counsel of the assessee pointed that in ground No.9 of the appeal, the assessee had assailed double taxation of sponsorship rights income. The assessee had filed rectification petition before AO, the same was allowed and the order was rectified. In view of the rectification order passes u/s 154 of the Act, ground no.9 has become infructuous.

7. Per contra, Shri Narendra Singh, representing the Department vehemently supported the impugned order and prayed for dismissing the appeal of the assessee.

8. We have heard the submissions made by rival parties and have examined the orders of authorities below. We have also considered the orders of the Tribunal in assessee's own case for assessment year 2009-10 and 2010-11 (supra). We find that the issues raised in the present appeal are recurring and the same have been adjudicated by the Tribunal in the preceding assessment years.

9. The first issue in appeal, raised in grounds No.2 and 3 is qua payment of 'Franchisee fee', whether capital or revenue in nature. The assessee entered into IPL Franchisee agreement with BCCI – IPL on 04/04/2008. The assesse paid Rs.30,03,60,000/- as annual 'Franchisee Fee' to BCCI in accordance with aforesaid Franchisee agreement and claimed the same as revenue expenditure. Whereas, the Revenue has held the same to be on capital account. The Assessing Officer held that the 'Franchisee Fee' paid by the assesse provides benefit of enduring nature and is not a fee for playing the IPL Matches. Rather, it is the

consideration for owning IPL team. The 'Franchisee Fee' payments creates an intangible asset being Licence or Franchisee akin to Licence or Franchisee referred to in section 32(1)(ii) of the Act. The CIT (A) has upheld the findings of Assessing Officer. We find that for similar reasons the Assessing Officer had disallowed assessee's claim of treating 'Franchisee Fee' as revenue expenditure in the very first year of claim i.e. assessment year 2009-10. The assessee carried the issue in appeal to the Tribunal in ITA No.1307/Mum/2013 (supra). The Co-ordinate Bench after examining the facts of the case and various decisions held that the 'Franchisee Fee' paid by the assessee is in the nature of revenue expenditure. For the sake of completeness relevant extract of the finding of Tribunal on this issue are reproduced herein below:-

> *"47. We have deliberated at length as regards the nature of the rights as got vested with the assessee on the payment of the Franchise fee of Rs.30,03,60,000/- to BCCI. We have given a thoughtful consideration to the issue before us and are of the considered view that the payment of the Franchise fee by the assessee to BCCI-IPL only facilitated participation in the league and operating the team for the year for which the payment pertained, with no vested right to participate in the events for the subsequent year/years. We are of the considered view that as the aforesaid payment of Franchise fee which facilitated the participation in the league and operating the team was restricted only to the year to which the payment pertained, therefore, it can safely be concluded that by making such payment there was neither a creation of an asset or generation of a benefit of an enduring nature in the hands of the assessee. We find that a conjoint reading of Clause 7 of the agreement contemplating the payment of the Franchise fee and Clause 1 defining the term "year", clearly reveals beyond any scope of doubt that the payment of the Franchise fee of Rs.30,03,60,000/- by the assessee for IPL Season-1 was only for the period 10.04.2008 (i.e the date of the signing of the agreement) till 31.12.2008. That as stands gathered from the franchise agreement, the making of the aforesaid payment of Franchise fee by the assessee to BCCI-IPL for IPL Season-1 only enabled the assessee to participate in the league tournaments for IPL Season-1 and operate its team for the aforesaid period for which the payment was made. We are unable to persuade ourselves to subscribe to the view of the lower authorities that any benefit of enduring nature was generated in the hands of the assessee by making the payment of the Franchise fee of Rs.30,03,60,000/-, which as observed by us was only for facilitating the assessee to participate in the league tournaments for IPL Season-1. We have deliberated on the nature of rights of the assessee franchisee on payment of the Franchise fee and find that while for the "Central Rights" were retained by BCCI, the "Franchisee rights" remained with the assessee. We further find that though by making the payment of the Franchise fee the assessee got a right to participate in the league and operate its home team for the year for which the payment was made, but however, the non-staging of the league by BCCI-IPL (in whole or part) would not constitute a breach of the agreement, and the assessee was neither vested with any right to enforce the playing of such matches by BCCI nor had any right to take any legal action for the said failure on the part of the BCCI to stage the matches. We have further observed that the aforesaid franchise rights as per Clause 16 of the franchise agreement were personal to the franchisee and it had no right to either assign the agreement or to sub-contract or otherwise delegate the franchisees obligations under it without the BCCI-IPLs written consent. We further find that the issue before us as to whether the Franchise fee paid to BCCI-IPL is a revenue expenditure or a capital expenditure had already been looked into and adjudicated upon by a coordinate bench of Tribunal, viz. ITAT "I" Bench, Mumbai in the case of India Win Sports Pvt. Ltd. Vs. ACIT (ITA No. 5290 & 5291/Mum/2014, dated 22.07.2016, wherein the Tribunal had held as under:*

> *"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 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 fee; if the assessee fails to make the payment, then it would not be allowed to participate in IPL. 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 BCCI-IPL to give a right to the assessee to participate in the matches with its team. Therefore, the annual franchise payment was a revenue expenditure."*

We further find that a similar view was also taken by the ITAT, Hyderabad "B", Hyderabad in the case of DCIT Vs. M/s Deccan Chargers Sporting Ventures Ltd. (ITA No. 1043/Hyd/2013, dated 28.10.2015, wherein too the Tribunal had concluded that the Franchise fee paid by the franchisee assessee to BCCI-IPL was in the nature of a revenue expenditure. We find that the judgments of the Hon'ble Supreme Court in the case of Techno Shares & Stocks Ltd. & Ors. vs. Commissioner Of Income Tax (2010) 327 ITR 323(SC) and Jonas Woodhead And Sons (India) Ltd. Vs. Commissioner of Income-Tax (1997) 224 ITR 342 (SC) relied upon by the A.O are distinguishable on facts. We find that in the case of Techno Shares & Stocks Ltd. & Ors (supra) the issue before the Hon"ble Apex Court was as to whether the right of membership conferred upon the members under the BSE membership card is a "business or commercial right" which gives a non-defaulting continuing member a right to access the exchange and to participate therein, and in that sense a license or akin to licence in terms of Sec. 32(1)(ii) of the Act. We find that as the aforesaid right of membership conferred upon the members under the BSE membership card an enduring benefit, which would vest with the stock exchange only on the default/demise in terms of Rules and bye-laws of BSE, therefore, it was in the backdrop of the aforesaid material facts that the Hon"ble Apex Court had concluded that the same was an intangible right which was entitled for claim of depreciation. We may herein observe that the Hon"ble Apex Court in the aforesaid case had as a word of caution observed that the said judgment may not be understood to mean that every business or commercial right would constitute a "licence" or a "franchise" in terms of Sec. 32(1)(ii) of the Act, by holding as under:

> *"24. Before concluding, we wish to clarify that our present judgment is strictly confined to the right of membership conferred upon the member under the BSE Membership Card during the relevant assessment years. We hold that the said right of membership is a "business or commercial right" which gives a non-defaulting continuing member a right to access the Exchange and to participate therein and in that sense it is a licence or akin to licence in terms of s. 32(1)(ii) of the 1961 Act. That, such a right vests in the Exchange only on default/demise in terms of the rules and bye-laws of BSE, as they stood at the relevant time. Our judgment should not be understood to mean that every business or commercial right would constitute a "licence" or a "franchise" in terms of s. 32(1)(ii) of the 1961 Act. "*

Similarly, in the case of Jonas Woodhead And Sons (India) Ltd. (supra) the Hon"ble Apex Court in the backdrop of the facts involved in the case before it, observed, that as the foreign company pursuant to an agreement with the assessee had provided technical know how and services for setting up of the plant and manufacturing of products, with no embargo on the assessee to continue with the manufacturing of the products even after the expiry of the agreement, therefore, an enduring benefit got vested with the assessee, and thus the payment made by the assessee for the same was a capital expenditure. We are of the considered view that unlike the facts involved in the aforesaid case laws

relied upon by the A.O, in the case before us, as no enduring benefit by making the payment of the Franchise fee got vested with the assessee, therefore, the said judicial pronouncements being distinguishable on facts would not assist the case of the revenue. ***We thus in the backdrop of our aforesaid observations and finding ourselves to be in agreement with the view taken by the coordinate benches of the Tribunal, therefore, are of the considered view that the payment of the Franchise fee for IPL Season-1 of Rs.30,03,60,000/- by the assessee can safely be held to be in the nature of a revenue expenditure,*** *which was rightly claimed by the assessee as such while computing its income for the year under consideration. We thus set aside the order of the CIT(A) and direct the A.O to delete the addition of Rs.30,03,60,000/-. We may herein observe that as we have held that the Franchise fee of Rs.30,03,60,000/- paid by the assessee to BCCI is a revenue expenditure, therefore, the contentions of the assessee as regards quantification of the W.D.V for computing the depreciation in respect of the franchise rights is rendered as redundant and is not being adjudicated by us. The Ground of appeal No. 2 to 4 are allowed in terms of our aforesaid observations."*

In assessment year 2010-11 the Assessing Officer again held 'Franchisee Fee' as capital expenditure. The CIT (A) upheld the findings of Assessing Officer on this issue. The assessee challenged the findings of CIT (A) in appeal before the Tribunal in ITA NO.4310/Mum/2014. The Tribunal vide order dated 12/12/2018 by placing reliance on the earlier order of the Tribunal for AY 2009-10 decided the issue in favour of the assessee holding 'Franchisee Fee' as revenue expenditure.

The facts in the assessment year under appeal are identical. The 'Franchisee Fee' has been paid in pursuance to agreement dated 04/04/2008, which has been examined by the Tribunal in the very first year of assessment. No contrary material has been placed on record by the revenue. Thus, respectfully following the decision of Co-ordinate Bench, we hold 'Franchisee Fee' paid by the assessee is revenue in nature. **Grounds No. 2 and 3 of the appeal are allowed.**

10. In ground No. 4 of the appeal, the assesse has made alternate prayer that if the payment is held to be on capital account, depreciation to be allowed on actual entire Franchise Fee paid. Since, we have accepted primary contention of the assesse and have held payment of Franchise fee as revenue expenditure, the alternate plea of the assess has become infructuous. **The ground No. 4 of the appeal is dismissed as such**.

11. In grounds No.5 and 6 of the appeal, the assessee has assailed adhoc disallowance of air fare and travelling expenditure. The assessee in the impugned assessment year claimed air fare and travelling expenditure of Rs.1,03,85,544/-. The Assessing Officer held that the

expenditure includes travelling expenditure incurred for VIPs and Celebrities and, hence, not allowable under section 37(1) of the Act. The Assessing Officer made adhoc disallowance of 25% of such expenditure claimed. The contention of the assessee is that the expenditure is necessary for the business, as VIPs and Celebrities are invited to attract more crowd and add glamour to the sporting event. The ld. Counsel for the assessee asserted that in the impugned assessment year, the Assessing Officer has not pointed any discrepancy, hence, entire expenditure should be allowed. We find that in AY 2009-10 adhoc disallowance of 25% in respect of air fare and travelling expenditure was made by Assessing Officer on similar grounds. The Tribunal restored the issue back to the file of Assessing Officer by observing as under:-

> *"61. .....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 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."

Since the issue in present appeal is identical, we deem it appropriate to restore the issue to Assessing Officer for de-novo adjudication in line with above directions of the Tribunal. **Grounds No. 5 and 6 of the appeal are allowed for statistical purpose**.

12. Grounds No.7 and 8 of the appeal are against adhoc disallowance of expenditure relating to: (a) Boarding and Lodging; and (b) Food and Nutrition. The assessee has claimed expenditure on account of boarding and lodging Rs.95,85,836/- and food and nutrition Rs.18,61,320/-. The Assessing Officer disallowed Rs.39,93,047/- from the aforesaid expenditure i.e. 33% of the total expenditure. We find that in assessment year 2009-10, the expenditure on aforesaid account was disallowed for similar reasons. The Tribunal restored

the issue back to the file of Assessing Officer for de-novo consideration. The relevant extract of the findings of the Tribunal on this issue are reproduced herein under:-

> *"55. .....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 300 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."*

We find that in assessment year 2010-11, similar disallowance was made. The Tribunal relying on the decision for 2009-10 in assessee's own case, restored the issue to AO for fresh adjudication. Since the facts in the impugned assessment year are identical, we deem it appropriate to restore this issue back to the file of Assessing Officer with similar directions. In the result, **grounds Nos. 7 and 8 of the appeal are allowed for statistical purpose.**

13. In ground No.9 of the appeal, the assessee has assailed double taxation of Sponsorship Rights income pertaining to assessment year 2010-11 and 2011-12. The ld. Counsel for the assessee has pointed that the assessee had filed rectification petition under section 154 of the Act. The Assessing Officer has passed rectification order on 25/05/2016 and necessary relief has been allowed. Since the relief has already been granted to the assessee, **ground No.9 raised in the appeal has become infructuous and the same is dismissed as such.**

14. Grounds No.1 and 10 of the appeal are general in nature, hence, require no adjudication.

15. In Ground No.11 of the appeal assessee has assailed levy of interest under section 234D of the Act. The charging of interest under section 234D is mandatory and consequential, therefore, ground No.11 of the appeal is dismissed sans merit.

16. In ground No.12 of the appeal, the assessee has assailed initiation of penalty proceedings under section 271(1)(c) of the Act. Challenge to penalty proceedings under section 271(1)(c) of the Act at this stage is premature, hence, **the ground is dismissed**.

17. **In the result appeal of the assessee is partly allowed.**

18. This appeal was heard on 04/02/2020. As per Rule 34(5) of the Income Tax (Appellate Tribunal) Rules, 1963, (ITAT Rules, 1963), the order was required to be "ordinarily" pronounced within a period of 90 days from the date of conclusion of the hearing of appeal. The instant appeal was heard prior to the lockdown declared by the Hon'ble Prime Minister on 24-03-2020 in view of COVID-19 pandemic. The lockdown was

forced due to extra ordinary circumstances caused by world wide spread of COVID-19. Thereafter, the lockdown was extended from time to time. Therefore, the pronouncement of order beyond the period of 90 days from the date of hearing is not under "ordinary" circumstances. The Co-ordinate Bench of the Tribunal in the case of DCIT vs. JSW Ltd., ITA No.6264/Mum/2018 for A.Y 2013-14 decided on 14/05/2020, under identical circumstances, after considering the provisions of Rule 34(5) of the ITAT Rules, 1963, judgements rendered By Hon'ble Apex Court and the Hon'ble Bombay High Court on the issue of time limit for pronouncement of orders by the Tribunal and the circumstances leading to lockdown held:-

> *"10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only inconsonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of Otters Club Vs DIT [(2017) 392 ITR 244 (Bom)], Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed* ***"while calculating the time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly"****. The extraordinary steps taken suo motu by Hon'ble jurisdictional High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period during which ITA No. 6103 and lockout was in force is to excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case. Of course, there is no, and there cannot be any, bar on the discretion of the benches to refix the matters for clarifications because of considerable time lag between the point of time when the hearing is concluded and the point of time when the order thereon is being finalized, but then, in our considered view, no such exercise was required to be carried out on the facts of this case."*

Thus, in light of above facts and the decision of coordinate Bench, the present order is pronounced beyond the period of 90 days.

19. The appeal of the assessee is partly allowed. Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Order pronounced on Tuesday the 30th day of June, 2020.

Sd/-	Sd/-
(S.RIFAUR RAHMAN)	(VIKAS AWASTHY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 30/06/2020
Vm, Sr. PS(O/S)
प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai