

**IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No. 6675/Mum/2016

(Assessment Years: 2012-13)

Knight Riders Sports Pvt. Ltd., Backstage, Plot No.612, 15 th Road, Junction of Ramkrishna Mission Road, Santacruz (W), Mumbai – 400054.	बनाम/ Vs.	DCIT, CC – 4(2) Room No. 411, Aayakar Bhavan, M.K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCK3118M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Jehangir Mistri with Shri Hiten Chande, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri A. Mohan, CIT-DR

सुनवाई की तारीख / Date of Hearing	27/10/2020
घोषणा की तारीख /Date of Pronouncement	10/11/2020

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The assessee has filed an appeal against the order of the Ld.CIT(A)-52, Mumbai, passed u/s 143(3) and 250 of the Income Tax Act, 1961 (‘the Act’). The assessee has raised the following grounds of appeal:

General

1. erred in not accepting total returned income of the Appellant.

Deduction of franchise consideration - Capital or revenue expenditure

2. erred in upholding the order of the learned AO, by confirming the annual consideration of Rs 30,03,60,000 paid/payable by the Appellant to The Board of Control for Cricket in India ('BCCI'), which is revenue in nature, as a capital expenditure.

3. erred in upholding the order of the learned AO, by confirming that the annual consideration paid/payable to BCCI is in the nature of license or franchise or any other business or commercial right of similar nature (i.e intangible asset) as per the provisions of section 32(1)(ii) of the Act.

4. without prejudice to the above, erred in upholding the learned AO's order by confirming the cost of the intangible asset to be only Rs 30,03,60,000 (i.e the annual consideration), instead of adjusting the actual cost of the franchise for the purpose of computing the depreciation.

Arbitrary adhoc disallowance in connection with airfare and travelling expense

5. erred in upholding the order of the learned AO, by confirming that the arbitrary adhoc disallowance of the expenditure in connection with airfare and travelling expenses on the premise that the said expenses are not in the nature of business expenditure allowable under section 37(1) of the Act.

6. without prejudice to the above, erred in upholding the order of the learned AO, by confirming the arbitrary adhoc disallowance of a sum of Rs 59,80,098 (i.e 25% of Rs 2,39,20,390) being expenditure in connection with airfare and travelling expense, which was disallowed by the learned AO

without requesting for actual details of invited guests and celebrities.

Arbitrary ad hoc disallowance in respect of expenditure in connection with a) Lodging and Boarding and b) Food and Nutrition

7. erred in upholding the order of the learned AO, by confirming the adhoc disallowance of the expenditure in connection with Lodging and Boarding and Food and Nutrition on the premise that the said expenses are not in the nature of business expenditure allowable under section 37(1) of the Act.

8. without prejudice to the above,

- erred in upholding the arbitrary adhoc disallowance to the extent of Rs 77,94,826 (ie 33% of Rs 2,36,20,684), erroneously stated as Rs 78,00,034 in the order passed by the learned CIT(A), in connection with lodging and boarding and food and nutrition expenses of its invited guests and celebrities; and

- erred in not considering that the supporting invoices were not verified by the learned AO before making the arbitrary adhoc disallowance.

Others

9. erred in upholding the additions made to the returned income of the Appellant on an adhoc basis, on the basis of incorrect assumptions and not considering that the business expenses have been solely incurred for the purpose of the Appellant's business, which the Appellant does not agree and disputes.

10. erred in upholding consequential levy of interest under section 234B and 234D of the Act.

11. erred in upholding initiation of penalty proceedings under section 271(1)(c) of the Act.

Each of the above ground is independent and without prejudice to one another.

2. The Brief facts of the case are that the assessee company is engaged in the business of owning and operating Kolkata Franchisee of IPL i.e. Kolkata Knight Riders and e-filed the return of income on 28.09.2012 declaring income of Rs.Nil. Subsequently, the assessee filed revised return of income on 08.03.2013 with total income Rs.Nil. The return of income was processed under section 143(1) of the Act and the case was selected for scrutiny. The A.O has issued notice under section 143(2) and 142(1) of the Act calling for various details. In response to notice, the ld. AR of the assessee appeared from time to time and explained the case details. The A.O find that the assessee-company was incorporated on 27.02.2008 as 100% subsidiary of Red Chillies Entertainment Pvt. Ltd. The assessee-company has entered into the Franchise Agreement with BCCI-IPL on 04.04.2008 for Franchise Rights of IPL team named as Kolkata Knight Riders. On perusal of the financial statements, the A.O found that assessee has debited and claimed Franchisee Fees of Rs. 30,03,60,000/- in the profit and loss account and the AO is of the view that the same has to be treated as capital expenditure, which has an enduring benefit to the assessee. The assessee has filed submissions referred at page 3 to 10 of the

assessment order and explained with the reasons for claim of Franchisee Fee in the year of payment and supported with the judicial decisions and provisions of law. Whereas, the AO found that the Board of Control for Cricket in India (BCCI) started IPL series through Bid orders and leagues. The Franchisee were entitled to sale their Franchise to third party or to effect the transaction of control interest in the company which controls franchise after minimum period of three years subject to payment to IPL, percentage of value of business, being 10% of the first such sale or transfer and 5% subsequently. The AO dealt on the consideration for the Franchisee and the nature of payments, judicial decisions and finally concluded that the Franchisee payments are to be treated as a capital expenditure as it is in the nature of intangible assets being licensee or franchisee as referred in section 32(1)(ii) of the Act. The AO has capitalized the Franchisee Fee as an intangible asset and allowed depreciation and made disallowance of remaining amount of franchisee fees. On the second disallowance of Air-fare and Travelling Expenses, the AO found that the assessee company had debited an amount of Rs. 2,39,20,390/- to the Profit & Loss Account under Air-fare and Travelling expenses and called for the

information. The assessee filed the information referred at page 16 para-5.1 of the assessment order. Whereas the AO was not satisfied with the claims made by the assessee on Air-fare and Travelling expenses for VIP's and Celebrities. The AO has disputed the claims as the expenditure is not incurred wholly and exclusively for the purpose of business as per the provisions of section 37(1) of the Act and therefore, disallowed an adhoc amount of Rs. 59,80,098/-. Similarly the AO has made disallowance of website charges of Rs. 1,24,002/-, Lodging and Boarding, Food Nutrients and Catering Expenses of Rs. 88,41,330/- and allowed the claim under section 35D of the Act of Rs. 5,90,299/- and determined the total income of Rs. 35,64,63,570/- and passed under section 143(3) of the Act dated 26.03.2015.

3. Aggrieved by the order of AO, the assessee has filed an appeal with the CIT(A). The CIT(A) considered the grounds of appeal and submissions of the assessee on the disputed issues in respect of capitalization of Franchisee Fee, disallowance of Air-fare and Travelling expenses, website expenses and lastly Lodging & Boarding Expenses to be treated as Business Expenses. On the first disputed issue of franchisee expenses, the CIT(A) has elaborately dealt

on the submissions of the assessee, facts and the provisions of TDS and relied on the earlier orders, referred at page no-21 para-9 and finally concluded that the franchisee fee expenditure has to be treated as a capital expenditure and the AO was correct in allowing the depreciation and dismissed this ground of appeal of the assessee. On the second issue with respect to disallowance of expenses of Air-fare and Travelling of VIP's and Celebrities, the CIT(A) relied on the assessee's own case for A.Y 2010-11 & 2011-12, and confirmed the addition. In respect of Web Designing Expense, the CIT(A) relied on the decision of Asst Year 2011-12 and allowed the claim. On the disputed issue of disallowance of Lodging, boarding and Food and Nutrition Expenses, the CIT(A) considered the facts and relied on his own order and granted partial relief and partly allowed the appeal of the assessee. Aggrieved by the order, the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the ld. AR of the assessee Shri J.D.Mistri submitted that the assessee has challenged the disallowances made by the A.O and confirmed by the CIT(A) in ground of appeal no.2 to 4. The contentions of the LdAR are that for the Assessment Years 2010-11 and 2011-12, the Hon'ble

Tribunal has considered the Franchisee agreements and the claim raised by the assessee that, the franchisee fee is in the nature of revenue expenses and has to be allowed in the year in which it has been incurred and further submitted that, the Tribunal in assessee's own case has deleted the addition and allowed the claim of the assessee. On the second disputed issue with respect to disallowance of Air-fair and Travelling Expenses, the AO has made an adhoc disallowance without considering the fact that the expenses have been incurred wholly and exclusively and to be allowed under section 37(1) of the Act. Whereas, the A.O has disallowed the claim of 25% of such expenses without examining the facts and evidences filed. Further, the AR submitted that in the earlier years, the matter was restored to the file of A.O by the Hon'ble Tribunal and the A.O has granted relief to the assessee by restricting the adhoc disallowance to the extent of Rs. 5,00,000/-. Similarly, in respect of disallowance of expenditure on Boarding and Lodging, the LdCounsel submitted that the assessee has furnished the complete details and the A.O was not justified in making disallowance without proper examination and verification of the facts. The contention of the AR that such expenses are

required to be allowed as deduction under section 37(1) of the Act. Further for the earlier asst years, the Hon'ble tribunal has restored the issue to the file of A.O. The LdAR filed a chart and Paper Book to substantiate his arguments and prayed for allowing the appeal.

5. Contra, the DR relied on the orders of CIT(A) and and prayed for dismissal of the assessee appeal.

6. We have heard the rival submissions and perused the material on record. The Ld AR submitted that the disallowances made by the A.O are dealt by the coordinate bench of tribunal in assessee own case for the A.Y. 2011-12 and the issues in present appeal are similar and identical as in the earlier assessee years. We find on the first disputed issue of payment of Franchise fees to BCCI as per the Franchise Agreement and the assessee claimed as revenue expenditure. The Hon'ble tribunal in ITA no4389/mum/2015 dated 30-06-2020 in assessee own case for assessment year 2011-12 has observed at page 4 para 9 of the order read as under:

“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 assessee 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 assessee 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."**

7. We find the facts in the present case are similar and identical as in earlier years. Where the assessee has paid the Franchisee Fee to BCCI and the claim

was examined and the Revenue could not controvert with any new evidences. We respectfully follow judicial precedence and consider the Franchisee Fee paid to the BCCI as revenue expenditure and direct the Assessing officer to delete the addition and allow the claim of the assessee.

Further the assessee has also raised alternative claim. We find that, when the Franchisee Fee paid is treated as revenue expenditure and directed the A.O to allow the claim, Hence the alternative claim becomes infructuous and is dismissed.

8. The second disputed issue the LdAR argued on the adhoc disallowance of Air-fare and Travelling expenses of Rs.59,80,098/-and the contentions are that such expenditure has to be incurred on the VIP's and Celebrities to attract the crowd of the matches on the sports events. We find this issue was considered by the Tribunal in assessee's own case in ITA No. 4389/Mum/2015 for A.Y. 2011-12 at page 8 & 9 of the order as under:

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. Needless to say, the A.O shall during the course of the set aside proceedings afford sufficient opportunity of being 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.**

We found the facts of the present case are similar to the earlier assessment years and the Hon'ble Tribunal has dealt on various aspects. We respectfully follow the decision and restore the disputed issue to the file of A.O for fresh examination and verification and allow the ground of appeal of the assessee for statistical purpose.

9. On the third disputed issue, the assessee has challenged the adhoc disallowance of expenditure on Boarding and Lodging & Food and Nutrition expenditure for Celebrities where the A.O has disallowed 33% of the claim. We found that this

issue was also dealt by the Hon'ble Tribunal in assessee's own case for assessment year 2011-12 at page 9 para 12 which is read as under:

"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."

10. We follow the judicial precedence and the facts are similar. Accordingly, we restore the disputed issue to the file of A.O with the similar directions as in earlier years and allow the grounds of appeal of the assessee for statistical purpose.

11. The assessee challenged the levy of interest under section 234B and 234D of the Act. We find the levy of interest is consequential and mandatory in nature. Therefore the submissions of the assessee are not tenable and are dismissed. Further the assessee has challenged the levy of penalty under

section 271(1)(c) of the Act which is premature and the ground of appeal is dismissed.

12. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 10.11.2020

Sd/-

(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 10/11/2020

SK, PS

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT,
Mumbai