

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1849/Bang/2019
Assessment Year : 2013-14

M/s. Bangalore Turf Club Ltd., Post Box No. 5038, #52, Race Course Road, Bangalore – 560001. PAN: AABCB6217G	Vs.	The Deputy Commissioner of Income Tax, Circle-1 (1) (2), Bangalore.
APPELLANT		RESPONDENT

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ITA No. 2248/Bang/2019
Assessment Year : 2013-14

The Deputy Commissioner of Income Tax, Circle-1 (1) (2), Bangalore.	Vs.	M/s. Bangalore Turf Club Ltd., Post Box No. 5038, #52, Race Course Road, Bangalore – 560001. PAN: AABCB6217G
APPELLANT		RESPONDENT

Assessee by	:	Shri Padamchand Khincha, CA
Revenue by	:	Shri Rajendra Kumar Mishra, CIT (DR)

Date of Hearing	:	24-08-2021
Date of Pronouncement	:	11-10-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present cross appeals are filed by assessee and revenue against order dated 31/07/2019 passed by Ld.CIT(A)-1, Bangalore for assessment years 2013-14 on following grounds of appeal:

ITA No.1849/Bang/2019

“I. General Ground

1.1. The order passed by the learned CIT(A) to the extent prejudicial to the appellant is bad in law and liable to be quashed.

Grounds relating to disallowance under section 40(a)(ia)

2.1. The learned CIT(A) has erred in confirming the disallowance in respect of payment of stake money amounting to Rs. 33,87,11,726 under section 40(a)(ia) without appreciating the fact that no tax was deductible under section 194BB or 194B of the Act.

2.2. The learned CIT(A) has erred in not appreciating that section 194BB does not cover stake money paid to horse owners; a legal proposition accepted by the Board in Circular No 240 dated 17.05.1978. The disallowance made by the learned AO and confirmed by learned CIT(A) is therefore against the mandate of a binding circular.

2.3. Assuming and without admitting that the disallowance under section 40(a)(ia) is correct, such disallowance must be restricted to 30% as the amendment made by Finance Act (No.2), 2014 with effect from 01.04.2015 is remedial in nature and hence retrospective in its applicability.

3. Grounds relating to applicability of a binding judgment which has been stayed

3.1. The learned AO has erred in not following the decision of the Jurisdictional High Court in Bangalore Turf Club v UOI (2014) 228 Taxman 234 wherein it has held that the payment of stake money is neither covered under section 194BB nor under section 194B of the Act.

3.2. The learned AO has erred in not appreciating that a review petition filed by the department does not empower the assessing officer to disregard a binding jurisdictional high court decision.

3.3. On facts and in the circumstances of the case and law applicable, the decision of the Jurisdictional High Court was binding on the

department and therefore the disallowance of stake money under section 40(a)(ia) is to be deleted.

3.4. The learned CIT(A) has erred in not appreciating the fact that the stay of operation of a decision by an interim order does not wipe out the existence of the decision and it does not undermine the authority of a decision as a precedent.

3.5. The learned CIT(A) has erred in relying on the order passed under section 194B read with section 201 for the AY 2006-07 to AY 2015-16 without appreciating the fact that the same is pending before the Division Bench of High Court and the High Court has implicitly directed that no order connected thereto be implemented without the leave of the court.

3.6. The learned CIT(A) has erred in not appreciating the fact that the interim order of the High Court was passed on 07.12.2016, which is after the close of the financial year 2012-13. Such being the case, the decision of Hon'ble Single Judge of Karnataka which has categorically held that there is no liability to deduct taxes on stake money is explicitly applicable during the financial year 2012-13.

4. Grounds relating to disallowance of expenditure incurred on re-modification of TV towers under section 37

4.1. The learned CIT(A) has erred in confirming the disallowance of revenue expenditure incurred on re-modification of TV towers claimed as deduction amounting to Rs. 8,40,000/-.

4.2. The learned CIT(A) has erred in concluding that the appellant has obtained an enduring benefit by incurring the impugned expenditure and thus constitutes capital expenditure.

4.3. On facts and circumstances of the case, the impugned expenditure of Rs. 8,40,000/- constitute revenue expenditure and should be allowed as a deduction under section 37(1) of the Act.

5. Grounds relating to disallowance of expenditure incurred on constructing temporary stables: repairs to existing stables and concreting of such stables under section 37

5.1. The learned CIT(A) has erred in confirming the disallowance of revenue expenditure incurred on constructing temporary stables; repairs on existing stables and concreting such stables claimed as deduction totaling to Rs. 1,04,79,000.

5.2. The learned CIT(A) has erred in concluding that since the appellant had not incurred similar expenditure either in preceding

years or in subsequent years, the same failed to prove its nature as temporary structures and consequently were to be treated as capital expenditure.

5.3. On facts and circumstances of the case, the impugned expenditure of Rs. 1,04,79,000/-constitute revenue expenditure and should be allowed as a deduction under section 37(1) of the Act.

6. Grounds relating to disallowance of expenditure incurred on upgradation of UPS systems under section 37

6.1. The learned CIT(A) has erred in confirming the disallowance of revenue expenditure incurred on upgrading UPS systems claimed as deduction amounting to Rs. 12,20,000.

6.2. The learned CIT(A) has erred in not appreciating the fact that the reason for upgrading the existing UPS was that the old UPS was not able to handle much load and the same was not repairable. The expenditure was incurred in respect of the existing system to facilitate day to day carrying on of the business and thus was revenue in nature.

6.3. On facts and circumstances of the case, the impugned expenditure of Rs. 12,20,000/-constitute revenue expenditure and should be allowed as a deduction under section 37(1) of the Act.

7. Interest levied under sections 234B.

7.1. The learned AO has erred in levying interest under section 234B of the Act. On facts and circumstances of the case and law applicable, interest under section 234B is not leviable. The appellant denies its liability to pay interest under section 234B.

8. Prayer

8.1. In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the order passed by the learned CIT(A) and the order under section 143(3) passed by the AO be quashed Or in the alternative

a) Disallowance of stake money paid to horse owners of Rs. 32,64,43,509/- be deleted;

b) Disallowance of expenditure of Rs. 1,25,39,000/- alleged to be capital in nature be treated as revenue and allowed;

c) Interest levied under section 234B amounting to Rs. 3,66,41,150 be deleted.

The appellant prays accordingly.”

ITA No.2248/Bang/2019

“1. The order of the Learned CIT (Appeals), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.

2. The Ld. CIT (A) erred in deleting the disallowance made on wrong claim of expenses.

3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the Ld. CIT (A) be reversed and that of the Assessing Officer be restored.

4. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal.”

Brief facts of the case are as under:

2. Assessee is engaged in the business of conducting horse races. Ld.AO noted that Rs.33,87,11,726/- was disbursed as prize money to the participants in the races. It was observed by Ld.AO that assessee would collect ticket money from across the counters maintained at the club and disburse the money to the punters who win the bet.

Ld.AO noted that assessee disbursed stake money amounting to Rs. 33,87,11,726/- to the horse owners without deducting TDS as required under section 194 BB.

3. Ld.AO called upon assessee as to why the stake money and cups amounting to Rs. 33,87,11,726/- disbursed to horse owners without deducting TDS and claimed as expenditure in P&L account should not be disallowed in terms of provisions of section 40(a)(i) of the Act.

Assessee in response submitted that, *Hon’ble Karnataka High Court* in a Writ petition filed by assessee along with others by judgment dated 26/09/2014 observed that Circular No.240

dated 17/05/1978 issued by CBDT in respect of section 194 BB would not apply to stake money is and such stake monies are not regarded as winning from horse races or races, but constitute prize-money which the owner of a race horse is proceeds on account of his horse winning a position in the race. It was also submitted that *Hon'ble Karnataka High Court*, with regard to applicability of provisions of section 194B held that the stake money or prize money paid by race clubs to horse owners would not attract provisions of the section.

4. Ld.AO however disallowed the sum of Rs. 33,87,11,726/- under section 40(a)(i) for the reason that revenue sought review petition before *Hon'ble Karnataka High Court* against the decision dated 26/09/2014.

5. The Ld.AO further observed that assessee debited following expenses amounting to Rs.3,08,74,000/- in P&L account as revenue expenditure:

S.No	Item--Head of expense	Amount (Rs.)
1.	Betting terminals and other equipment	64,35,000
2.	TV Towers	8,40,000
3.	Asphalting of roads	1,19,00,000
4.	Repairs to stables	88,01,000
5.	Galvalume sheets	11,38,000
6.	Concreting in stable area	5,40,000
7.	Upgrading of UPS	12,20,000
TOTAL		3,08,74,000

6. Assessee vide letters dated 14/12/2015, 27/01/2016, 01/02/2016 and 11/02/2016 filed details and submissions in

support of the claim. The Ld.AO after considering the submissions was of the opinion that the expenses were wrongly claimed as revenue. It was observed that assessee obtained enduring benefit by incurring such expenses and therefore they were capital in nature.

7. The Ld.AO thus disallowed Rs.3,08,74,000/- under section 37(1) of the Act. In support the Ld.AO relied on:

CIT vs.Pandian Chemicals reported in 233 ITR 497

Uttar Bharat Exchange Ltd. vs. CIT reported in 55 ITR 550

Vikram Mills Ltd vs. CIT reported in 242 ITR 290

CIT vs.Kirloskar Tractors Ltd reported in 231 ITR 849

Aggrieved by the order of Ld.AO, assessee preferred appeal before the Ld.CIT(A).

8. The Ld.CIT(A) while considering disallowance under section 40(a)(ia) of the Act, observed that assessee debited TDS of ₹ 36,80,465/- in respect of part of stake money paid to horse owners amounting to the extent of ₹ 1,22,68,217/-. The Ld.CIT(A) directed Ld.AO to allow this expenditure after ensuring/verifying the TDS certificates.

In respect of the expenses disallowed by the Ld.AO, Ld.CIT(A) held following expenditure to be revenue nature:

- maintenance of betting systems and other equipments
₹ 63, 35,000/-
- Asphaltting of roads ₹ 1,19,00,000/-

The remaining expenditure incurred by assessee towards re-modification of TV towers to fit technological camera amounting to ₹ 8,40,000, towards upgrading of UPS amounting to ₹ 12,20,000 and expenditure incurred for setting up of stable for

housing racehorses and concluding the stable area - 99,39,000 + 5,40,000 were disallowed as capital.

Aggrieved by the order of the Ld.CIT(A), assessee as well as revenue are in appeal before us.

Assessee is appeal:

It is submitted that **Ground No:1** is general in nature and do not require adjudication.

9. Ground No.2 is relating to disallowance under section 40(a)(ia) amounting to Rs.33,87,11,726/-.

9.1 The Ld.AR submitted that the, said amount was disallowed without appreciating the fact that TDS was not deductible under section 194BB or 194B of the Act. The Ld.AR submitted that identical issue arose the immediately preceding assessment year wherein this coordinate bench of this *Tribunal* in assessee's own case in *ITA Nos. 1848 & 1850/Bang/2019* by order dated 18.12.2020 for A.Ys. 2012-13 and 2014-15 on identical facts held as under:

"Ld.AR submitted that against the order passed by Ld.Single Judge of Hon'ble Karnataka High Court by decision dated 26/09/2014, revenue preferred writ appeal being WA-60/2015, before a division bench filed on 07/01/2015. Hon'ble court passed an interim order by observing as under:

"4. On the aspects of the amounts of TDS to be deducted towards stake money by the club, we find that as up till now in past, deduction has not been made and the /question is to be considered on the aspects of deduction by the club while making payment of the state money. It appears to us that, the payee of the stake money should file an undertaking to this court that as and when it is to be directed by the court, the amount of TDS shall be deposited with the club for enabling the club to deposit the amount with the Revenue/Income Tax Department.

5. As a matter may required to be considered de novo by the authority concerned, it would be appropriate to stay the observations made by the Ld.Single Judge so far as they relate to the obligations of the club to deduct TDS or as to whether the provisions of TDS would be applicable or not. But, of course, even if the authority after

hearing the parties passes the appropriate order, the same should not be implemented without leave of this court.

6. Interim order passed by the Karnataka in Writ Appeal filed by the revenue:

On 07/ 12/2016, the Hon'ble High Court of Karnataka has passed an interim order with regard to the Writ Appeal filed by the department (WA 60/2015). Copy of the said interim order is enclosed as Annexure 2.

7. After admitting the writ appeals filed by the department, the Karnataka High Court at para 4 of the interim order held as under.

"4. On the aspects of the amount of TDS to be deducted towards stake money by the club, we find that as up till now in past, deduction has not been made and the question is to be considered on the aspects of deduction by the club while making payment of the stake money. It appears to us that, the payee of the stake money should file an undertaking to this Court that as and when. it is so directed by the Court, the amount of TDS shall be deposited with the club for enabling the club to deposit the amount with the Revenue/Income Tax Department."

8. At para 5 of the interim order on Writ Appeal filed by the department (WA 60/2015), the observations of the learned Single Judge in *Bangalore Turf Club Ltd v UO1 (2014) 228 Taxman 234* on the obligation of the appellant to deduct TDS or whether TDS provisions would be applicable or not was stayed and it was held as under.

"5. As the matter may required to be considered denovo by the authority concerned, it would be appropriate to stay the observations made by the learned Single Judge so far as they relate to the obligation of the club to deduct TDS or as to whether the provisions of TDS would be applicable or not. But, of course, ezertj the authority after hearing the parties passes the appropriate order, the same should not be implemented without leave of this Court'

9. Subsequently, the Karnataka High Court, by vide interim order WA 60/ 2015 dated 07-12-2016 held as under:

6. "In view of the aforesaid, we are inclined to pass thv following interim order:

The matter shall stand restored to the authority at the stage of show cause notice. The club-original respective petitioner shall be at liberty to file a reply/ additional reply if it so desires....

7. The observations made by the learned Single Judge in the impugned judgment so far as interpretation of the respective provisions of the Act for TDS, shall remain stayed.

8. It is also observed and directed that the concerned authority or the appropriate officer after the reply/ additional reply is submitted by the original petitioner, club or the private respondent/ original

petitioner as the case may be shall give opportunity of hearing to the respective parties and shall pass a fresh order in accordance with law and shall decide as to whether the requirement of TDS is applicable to the stake money being paid by the club to the person concerned who are owners of the horse participating in the race or not.

9. The aforesaid exercise shall be completed preferably within a period of three months from the receipt of certified copy of the order of this Court. However, it is observed that, the order which may be passed by the authority or the appropriate officer shall not be implemented without express leave of this Court"

10. Until further orders, at the time when stake money is to be paid by the original petitioner-club to the person concerned, the deduction shall not be made under the head of TDS if the owner of the horse/ person concerned files an undertaking before this Court that he shall re-deposit the amount with the club with the interest chargeable as per the Income Tax Act within a period of one month from the date on which this Court so directs to deposit the amount, so as to enable the club to deposit the amount of TDS with the Income Tax Department. Upon the copy of the undertaking produced by the owner of the horse/ person concerned, the petitioners club shall be at liberty to pay the amount without TDS, but separate calculation and record shall be maintained of the amount of TDS not deducted pursuant to this order.

11. It is also clarified that pending present proceedings, it would be open to the person concerned/owner of the horse to show the income of stake money received in their respective returns in accordance with law and the pendency of these proceedings shall not operate as a bar in the assessment proceedings before the respective authority. However, it is observed that, the assessment order if any passed in respect of any owner of the horse/person concerned shall be placed on record which may be considered by the Court at the time when final order is to be passed on the aspects of re-deposit of the amount of TDS or otherwise as observed earlier.

12. Office to place the matter upon a note filed by either side declaring that the order is passed by the appropriate authority pursuant to show cause notice.

13. It is observed and directed that the appropriate authority shall independently consider the matter without being in any manner influenced by any observations made by the learned Single Judge or the earlier order passed by it. The authority shall consider the matter independently in accordance with law.

Ld.AR submitted that Hon'ble Karnataka High Court stayed the operation of order dated 26/09/2014 and directed authorities below not to recover any demand under section 201(1) and 201(1A), for relevant assessment years which also included assessment year

2012-13 in assessee's case, without the leave of Hon'ble Court. Hon'ble Court vide para 8 also directed to decide whether the provisions of TDS are applicable to stake money being paid to the club to the person concerned who are owners of horse participating in the race.

On merits Ld.AR placed reliance on following decisions and CBDT circulars:

- Extract from CBDT circular No. 240 dated 17/05/1978
- Extract from Finance Minister's speech, memorandum explaining provisions of finance bill 2001 dated 28/02/2001 proposing amendments to section 194B w.e.f. 01/06/2001
- Circular issued by CBDT No. 14/2001 dated 09/11/2011 explaining provisions of Finance Bill 2001
- Decision of Hyderabad Tribunal in case of ACIT vs Hyderabad race club in ITA No. 319-323/HYD/2015 for assessment year 2009-10 to 2013-14 by order dated 04/09/2015
- Decision of Chennai Tribunal in case of Madras Race Club vs DCIT in ITA No. 646-657/MDS/2015 for assessment years 2007-08 to 2012-13 by order dated 28/10/2015
- Decision of Mumbai Tribunal in case of Royal Western Turf Club Ltd vs ACIT reported in (2019) 108 Taxmann.com 91 for assessment year 2012-13

Ld.AR submitted that, Mumbai Tribunal in case of Royal Western Turf Club Ltd vs ACIT (supra) in recent a judgment followed the view taken by Ld.Single Judge of Hon'ble Karnataka High Court (supra) held that, stake monies are not liable to TDS under section 194B of the Act.

On the contrary, Ld.CIT DR placing reliance on orders passed by authorities below submitted that, stake monies forms part of the words card games and other games of any sort which has been inserted in section 194B of the Act w.e.f. 01/06/2001. She submitted that horse racing income comes under the ambit of other games of any sort and therefore TDS is necessarily to be deducted on stake money paid by club to horse owners.

We have perused submissions advanced by both sides in light of records placed before us.

All the apprehensions raised by learnt CIT DR has been dealt with by Mumbai Tribunal in case of Royal Western Turf Club Ltd vs ACIT (supra) as under:

5. Before us, the first argument put forth by the learned representative for the assessee was that Section 194BB of the Act was brought in the statute by Finance Act, 1978 w.e.f. 01.04.1978, and it applies to a person who has license for horse racing and who is responsible for paying to any person any income by way of winning from horse races. A Circular was issued by the CBDT explaining the provisions of the Finance Act, 1978 i.e. Circular No. 240 dated 17.05.1978. In para 25.1.6 of the said Circular, it is specifically provided that the provisions of TDS shall not apply to income by way of 'Stake Money' as the term 'Stake Money' constitute the prize money received by the owners of the horse on account of the

fact that the horse wins the race or comes second or third, as the case may be. It was contended that the CBDT Circulars are binding on the Departmental authorities, as held by the Hon'ble Supreme Court in the cases of *K.P. Verghese v. ITO* [1981] 7 Taxman 13/131 ITR 597 and *Ellerman Lines Ltd. v. CIT* [1971] 82 ITR 913. In fact, the very same Circular No. 240 dated 17.05.1978 came up for consideration before the Madras High Court in the case of *CIT v. Investment Trust of India Ltd.* [2003] 127 Taxman 168/264 ITR 506 and it was held to be binding on the Departmental authorities. Accordingly, it has been explained that in view of the Circular of CBDT dated 17.05.1978 (supra), which specifically provides that no TDS is required to be made in respect of payment of stake money, the Assessing Officer is not right in treating the assessee as an 'assessee in default' for the purposes of Sec. 201(1) of the Act. It was further pointed out that what cannot be done directly, cannot be done indirectly. The Assessing Officer, being bound by the CBDT Circular, cannot hold the assessee liable to TDS by bringing the assessee within the domain of Section 194B of the Act, which is not permitted in law. In *V.M. Salgaocar & Bros. (P.) Ltd. v. CIT* [2000] 110 Taxman 57/243 ITR 383 (SC), the Hon'ble Supreme Court has held that the Circulars of the CBDT provide as to how the Revenue itself understands the enactment/amendment. Hence, the language of the Circular is very clear that Revenue accepts that "stake money" is outside the purview of TDS.

6. The next argument put-forth by the learned representative was that specific provisions prevail over general provisions. As per the learned representative, Section 194BB of the Act is a specific provision applicable in case of winnings from horse races. It is contended that a specific provision overrules a general provision, provided both the provisions operate in the same field. In this regard, reliance was placed on the decision of *CIT v. Shahzada Nand & Sons*[1966] 60 ITR 392 (SC) and *Kirloskar Pneumatic Co. Ltd. v. Commissioner of Surtax* [1994] 74 Taxman 615/210 ITR 485 (Bom.) and *Forbes Forbes Compbell & Co. Ltd. v. CIT* [1994] 74 Taxman 268/206 ITR 495 (Bom.). Thus, as per him, the Assessing Officer erred in applying Section 194B of the Act, which is a general provision applicable to 'card game or other game of any sort', which would not cover stake money on horse races; and, for the latter income, Section 194BB of the Act is the specific provision. It was further brought to our notice that even CBDT accepts that specific enactment prevails over the general enactment. In Circular No. 8 of 2005, the CBDT itself has stated that specific provision of law will override general provisions of law. When a specific section in Chapter XVII is provided for by the Legislature to deal specifically with horse races, the Revenue cannot invoke a general section, such as 194B of the Act, to hold the assessee in default. In this regard, reliance was also placed on decision of Hon'ble Supreme Court in the case of *U.P. State Electricity Board v. Hari Shankar Jain* [1978] 4 SCC 16 and *LIC v. D.J. Bahadur* [1981] 1 SCC 315.

7. Thereafter, the learned representative for the assessee explained why the provisions of Section 194B of the Act are not applicable. It was pointed out that when Section 194B of the Act was amended in

2001 to insert the words 'card game or other game of any sort', the intention was to cover TV shows and quiz shows. Correspondingly, another amendment was brought in Section 2(24)(ix) of the Act w.e.f. from 01.04.2002 and an Explanation was added explaining that the words 'card game or other game of any sort' shall include any game show, an entertainment program on TV or any electronic mode in which people compete or any other similar game. A combined reading of Sections 194B and 2(24)(ix) Explanation (ii) makes it clear that the said amendment would not apply to winning from horse races. This fact is also clear from the Memorandum explaining the provisions of Finance Bill, 2001 which makes it clear that the intention of the Legislature was to cover various kinds of quiz shows which are launched on TV and shows of similar kind. Our attention was also drawn to the Budget speech of the Finance Minister on 28.02.2001 wherein he stated that "television game shows are very popular these days and I propose that income tax at 30 % will be deducted at source from the winnings of these and all similar game shows." Hence, it is submitted that it would be incorrect to say that the aforesaid amendment in Section 194B of the Act brings within its fold the 'Stake Money' received by the owners of the winning horses; and, that in any case, Section 194BB of the Act is the relevant section, which anyway excludes the aforesaid receipts from its purview. Thus, a subsequent amendment in a general enactment cannot be said to override earlier special enactment. It has also been asserted that the amendment to Section 194B of the Act came in 2001 and, it was an admitted position that in all earlier years, this provision was never made applicable on the assessee.

8. The learned representative thereafter explained the difference between the term "winnings" and "stake money". "Winnings" is the amount received by people who bet in horse races. Income by way of "stake money" is the gross amount received by the owner on account of horse securing a position in the race. Hence, income from "stake money" is different from income from "winnings" and Section 194B of the Act only applies to income from "winnings". It is because of this difference that the CBDT issued a Circular in 1978 (supra) wherein it was held that Section 194BB applies to "winnings", and because "stake money" is different from "winnings"; and since Section 194BB uses the word "winnings from horse races", hence it will not apply to "stake money" as per the CBDT Circular. Circular No. 240 dated 15.05.1978 which explains the provisions inserted by the Finance Act, 1978, whose relevant extract is as under:

"3. The term "winnings", in common parlance, means the amount received by the punter in excess of the bet laid by him on the horse or horses which have won in the particular race. Where a punter places bets on more than one horse in a particular race, the expression "winnings" will connote the amount won by the punter in that horse race reduced by the amount invested by way of bet on the particular horse or horses which won the race, and not by the amount invested on the horse or horses which lost in that race. Hence, where a punter invests Rs. 100 each on two horses - horse "A" and horse "B"- in a particular horse race, and he wins Rs. 500 on the bet placed on horse

"A" but loses the bet on horse "B", the winnings of the punter from this horse race would be Rs. 400 (Rs. 500 Rs. 100) and not Rs. 300 (Rs. 500-Rs. 200).

6. The provisions for deduction of tax at source will, however, not apply to income by way of stake money. This is because "stake money" in common parlance is not regarded as winnings from horse race, but really constitutes the "prize money" received on a horse race by the owner thereof on account of the fact that the horse wins the race or stands second or in any lower position."

(underlined for emphasis by us)

It has also been emphasized that even the Legislature accepts the aforesaid understanding of "stake money" inasmuch even Section 74A of the Act explains the meaning of "stake money" as contained in CBDT Circular dated 15.05.1978 (supra).

9. *The next argument advanced by the learned representative was that there is an inherent difference between Sections 194B and 194BB of the Act; that Section 194B of the Act was introduced in 1972 and Section 194BB of the Act was introduced in 1978. Had the Government been of the view that horse races are covered in Section 194B of the Act, there would have been no need to specially introduce a new Section altogether in 1978. This clearly shows that even the Legislative intent was never to include horse races within the domain of Section 194B of the Act. As per the learned representative, the Government could have amended Section 194B of the Act itself and introduced the words "income from horse races"; however, the legislature was conscious of the fact that Section 194B of the Act operates in an altogether different domain and largely refers to "luck based games" as opposed to "skill based games" and hence, did not include horse races within Section 194B of the Act.*

10. *It was further submitted that Section 194B of the Act was amended in 2001 and the words 'card game or other game of any sort' were inserted. An amendment was also brought about in Section 2(24)(ix) of the Act whereby it has been stated that "card game or other game of any sort" includes any game show, any entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game. Hence, "card game or other game of any sort" is to be read and understood in this background and a 'horse race' cannot be put in this category since this definition talks about other games on television or electronic mode, in which people compete to win prizes. It refers to a platform wherein people compete and participate, which cannot be equated with a horse race. Thus, the Legislative intent at the time of introducing the amendment in Section 194B of the Act was to bring within its scope, money earned through games on television or electronic mode, in which people compete. In the above background, the learned representative for the assessee asserted the principle of 'ejusdem generis' and 'noscitur a sociis' are applicable in the instant situation. It was canvassed that as per the aforesaid principles, any word or a phrase takes its colour from the context in which same are used. Hence, the*

phrase 'or other game of any sort' in the instant situation refers to games akin to the games which are specifically mentioned in the text of Section 194B of the Act. The other principle is that of 'noscitur a sociis', which means that a word is to be judged by the company it keeps. In other words, in case of doubt, meaning of a word can be ascertained with reference to the meaning of words associated with it. Reliance in this regard was placed on the decision of Hon'ble Supreme Court in the case of State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610. Thus, when the words 'or other game of any sort' used in Section 194B of the Act are examined with reference to the preceding words and interpreted, it can be concluded that the activity of owning and maintaining horses cannot be equated with lotteries and card games. Moreover, words used in Section 194B of the Act are lottery, crossword-puzzle, and card games, which are essentially 'luck oriented' as opposed to being 'skill oriented' and hence, it would be wrong to equate a horse race, which is skill oriented with luck oriented games. It has also been explained that the Hon'ble Supreme Court in case of Dr. K.R. Lakshmanan v. State of Tamil Nadu [1997] 223 ITR 601 held that horse racing is a game of skill.

11. *It has also been explained that the Act itself distinguishes between income earned from lottery and such games vis-à-vis income of horse owners. Elaborating further, it is explained that Section 58 of the Act refers to amounts not deductible and sub-section (4) states that no deduction in respect of any expenditure shall be allowed while computing the income by way of any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature, whatsoever. However, the proviso thereof clearly distinguishes the case of the horse owners. It states that "Provided that nothing contained in this sub-section shall apply in computing the income of an assessee, being the owner of horses maintained by him for running in horse races, from the activity of owning and maintaining such horses."*

12. *Section 74A of the Act is a specific section stating that loss arising to horse owners from the activity of maintaining and owning race horses shall not be set-off against other income. Even there are restrictions on carry forward. Hence, this restriction of no set-off against income from other 'winnings' and allowing certain benefits of carry forward of loss arising from the activity of maintaining and owning race horses, and not other 'winnings', makes it evident that the intention of the Legislature from the very beginning has been to treat 'Income by way of stake money' as different from 'Income from winnings'. Further, Section 115BB of the Act, which was introduced via Finance Act, 1986, prescribed a flat rate of tax on Winnings from such games and states that income from any lottery or crossword puzzle or race including horse race (not being income from the activity of owning and maintaining race horses) or card game and other game of any sort or from gambling or betting of any form or nature whatsoever, shall be taxed in accordance with the provisions of that*

Section. Hence, Section 115BB of the Act itself distinguishes between other games and income earned through the activity of owning and maintaining race horses and excludes the latter. Notably, with the introduction of Section 115BB, sub-section (1) and (2) of Section 74A of the Act, which provided for set-off of losses with respect to lotteries etc., were omitted, but Sub-section (3), as discussed above, continued. Thus, as per the appellant, the Legislature has always treated lotteries and such other games differently from the activity of maintaining and owning horses.

13. It was further pointed out that identical issue was raised in the case of *Bangalore Turf Club Ltd. v. Union of India* [2014] 52 taxmann.com 290/[2015] 228 Taxman 234, wherein Single Judge Bench of the Hon'ble Karnataka High Court has ruled this issue in favour of the assessee. It was held that prize money paid by the Race Course to the owners of the horses would not attract the provisions of Section 194B of the Act. Against this Single Bench ruling, the Department moved to the Division Bench, which has sent back the case to the file of the Assessing Officer to adjudicate the issue de novo. Furthermore, it has been mentioned that the Chennai Bench of the Tribunal in the case of *Madras Club v. DCIT* [IT Appeal No. 646-657 (Mds) of 2015] and Hyderabad Bench of the Tribunal in the case of *Hyderabad Race Club* [IT Appeal No. 319/323 (Hyd) of 2015] has adjudicated similar issue in favor of the assessee.

14. An alternate plea has been raised to the effect that the Assessing Officer has not recorded a finding that the recipients of the stake money have not paid income-tax on the said income, and in the absence of such a finding, the assessee cannot be treated as an "assessee in default", and reliance was placed on the judgment of the Hon'ble Allahabad High Court in the case of *Jagran Prakashan Ltd. v. Dy. CIT* [2012] 21 taxmann.com 489/209 Taxman 92/345 ITR 288. Elaborating further, it is contended that the purpose of Chapter XVII of the Act is to provide for a mechanism of withholding tax. Explanation to Section 191 of the Act clearly states that a person can be held as an 'assessee in default' only when the recipient of income has also failed to pay such tax directly. In present case, however, the owners of the horses have declared such income in their tax returns. Hence, as per the provisions of Section 201 of the Act, the assessee cannot be treated as an 'assessee in default'. Reliance was placed on decision of the Hon'ble Supreme Court in the case of *Hindustan Coca Cola Beverages (P) Ltd. v. CIT* [2007] 163 Taxman 355/293 ITR 226 (SC). Before us, it was explained that complete details of the horse owners were filed before the Assessing Officer showing that taxes have been duly paid by them. Thus, as the horse owners who have earned the stake money are liable for payment of taxes, any additional demand on the assessee would amount to double recovery, which is impermissible.

15. It has also been submitted that in the present case, full list of recipients of the 'stake money', alongwith their details/documents and confirmations stating that this amount has been included by

them in their respective Returns of income were filed before the lower authorities, a copy of the said list has also been submitted in the Paper Book filed before us. Countering the allegation of the Assessing Officer that certificate was incomplete, it has been asserted that complete details, including PAN numbers and addresses of all recipients were provided. Furthermore, proviso to Section 201(1) of the Act is a beneficial provision, which has been introduced to avoid undue hardships and is retrospective in its applicability and is thus applicable for the instant year. In this regard, reliance was placed on the following judgments :—

Gujarat Pipavav Port Ltd. v. Dy. CIT [2013] 40 taxmann.com 174/[2014] 149 ITD 23 (Rajkot - Trib.) Radeus Advertising (P.) Ltd. v. Asstt. CIT [2017] 80 taxmann.com 353/164 ITD 384 (Mumbai - Trib.)

16. *The Ld. DR, on the other hand has merely placed reliance on the orders of the authorities below, and reiterated the reasoning contained in the respective orders, which we have already noted in the earlier part of the order, and is not being repeated for the sake of brevity.*

17. *We have carefully considered the rival submissions. The issue before us is limited to the applicability of TDS on the 'stake money' paid by the assessee to the owners of the horses who win the races. In this context, we shall first discuss the type of payments made by the assessee to owners on winning of the horse races. The assessee makes two types of payments. First, is in the nature of amount paid to the person who bets on the horses/jockeys. There is no dispute with regards to applicability of TDS on this type of payment as the same is liable for TDS u/s 194BB of the Act. We are concerned with the second type of payment made by the assessee, which are in the nature of prize money paid by the assessee to the owner of horses on account of the horse winning the race or standing second or in any lower position, which is termed as 'stake money'. The Assessing Officer has not disputed the fact that the payment made by the assessee is in the nature of 'stake money', thus there is no dispute with respect to the fact as to what constitutes 'stake money'. The Assessing Officer is of the view that by virtue of amendment in Section 194B of the Act by Finance Act, 2001, the scope of Section 194B of the Act has been widened to cover within its ambit winning from games of any sort even though Circular No. 240 dated 17.05.1978 (supra) issued in the context of Section 194BB of the Act excluded from its ambit 'stake money'; as per the Assessing Officer, due to the amendment assessee was very much liable to deduct tax at source u/s 194B of the Act. On the other hand, the appellant vehemently contends that the expression "card game and other game of any sort" derives its meaning from the words accompanying it and cannot be read to mean all games of any sort. It was further pointed out that specific provision shall prevail over general provision and Section 194BB of the Act being a special provision dealing with TDS on income arising from horse races and Circular no. 240 dated 17.05.1978 (supra) specifically excluding 'stake money' from the ambit of TDS, it was further argued that the amendment in general*

provision cannot bring back to tax what has been specifically excluded from its ambit by the special provision. Thus, it was submitted that provisions of Section 194B of the Act were not applicable on 'stake money' even after the amendment. The learned representative had also raised an alternate plea that the recipients of 'stake money' have already paid the taxes on the 'stake money' received from the assessee and thus, assessee should not be treated as "assessee in default" in view of the decision of Hon'ble Supreme Court in the case of Hindustan Coca Cola (supra) and provisions of Section 201(1) of the Act.

18. *At the outset, we find that heading of Section 194B of the Act is "Winning from lottery or crossword puzzle". It is a well settled principle of interpretation that the heading of a section should also be assigned meaning while interpreting the section. From the heading of the Section 194B of the Act it is amply clear that there is no whisper that Section 194B of the Act was intended to cover within its purview winnings from horse races. Now coming to the heading of Section 194BB of the Act, which reads as "Winning from horse race". Going by the heading of the two sections, it can be seen that Section 194BB of the Act is a specific section dealing with TDS on the winnings from horse races. Though the CBDT has specifically excluded "stake money" from the ambit of section 194BB of the Act by way of Circular No. 240 dated 19.05.1978, but it cannot be disputed that Section 194BB of the Act is the specific section which deals with TDS on 'Winning from horse races'.*

19. *Now, coming to the argument raised by the Assessing Officer that the Finance Act, 2001 has inserted the words 'card game or other game of any sort' in Section 194B of the Act which will even cover the "stake money" which is otherwise not covered by Section 194BB of the Act. We find that at the time when the amendment was brought in Section 194B of the Act, Section 194BB of the Act, which specifically dealt with TDS on winning from horse races, was already on the statute and the Legislature in its wisdom could have made the amendment in Section 194BB of the Act itself to include 'stake money' within its ambit; that would have obviated any need to make amendment in Section 194B of the Act, which is a general provision for TDS, in order to cover 'stake money' in its ambit. The learned representative has rightly pointed out to the Budget speech of the Finance Minister wherein it was stated that "television game shows are very popular these days and I propose that income tax at 30 % will be deducted at source from the winnings of these and all similar game shows." Another way of bringing to tax the 'stake money' was by way of withdrawal of Circular No. 240 dated 17.05.1978, which clarified that tax was not required to be deducted u/s 194BB of the Act with respect to income by way of 'stake money' as the same is not regarded as winning from horse races. However, said Circular is still in existence and the ld. DR has not disputed this fact. The entire gamut of the legal position leads to an irresistible conclusion that position of TDS on 'stake money' has not changed even after amendment in Section 194B of the Act by Finance Act, 2001 and the*

position prior to amendment continues to prevail, i.e. the stake money is not liable to TDS either under Section 194BB or under Section 194B of the Act.

20. Further, it is a well settled proposition of law that the CBDT Circulars are binding on the Department as it clarifies the understating of the provisions of the Act by the Revenue which cannot be disregarded by the income-tax authorities while construing the provisions of the Act. The ld. DR was not able to point out why the interpretation given in the CBDT Circular relied upon by the assessee should not prevail. We find that the Department has tried to indirectly tax what cannot be taxed by virtue of Circular issued by the CBDT, a situation which is impermissible in law. Thus, on this aspect also, we hold that 'stake money' is not liable to TDS u/s 194B of the Act."

We note that Mumbai Tribunal considered the issues in accordance with various provisions independently as per the directions of Hon'ble Karnataka High Court 13 and held that section 194B/194BB are not applicable to stake money.

Respectfully following the same we also hold that stake money paid by assessee to the horse owners are not liable to TDS under section 194B or section 194 BB of the Act. Consequentially no disallowance could be made under section 40 (a) (ia) of the act in the hands of assessee.

Accordingly ground No. 2-4 raised by assessee stands allowed."

9.2 The facts for year under consideration are identical and nothing contrary has been placed on record by revenue to distinguish the facts from the preceding year. Respectfully following the above redirect the Ld.AO to delete the disallowance made under section 40(a)(ia) of the Act.

Accordingly his ground raised by assessee stands allowed.

10. Ground No.4 is in respect of expenditure disallowed on modification of TV towers and under section 37.

10.1 The Ld.AR submitted that, during the year six TV towers were modified to fit the technology cameras which could be used during horse races. He submitted that there is no enduring benefit in the hands of assessee and that, amount paid for purchase of technological camera are capitalised the books of

account on which depreciation is claimed in accordance with section 32 of the Act.

10.2 The Ld.AR submitted that, assessee modified the designs as per the technology and therefore the replacement/re-modification of TV towers cannot be treated as an enduring benefit. He placed reliance on decision of *Hon'ble Delhi High Court* in case of *CIT vs. Denso India Pvt.Ltd.*, reported in (2010) 195 taxman 434. It has been submitted that necessary modifications needs to be done as per change in the technology and it is recurring expenditure.

On the contrary, the Ld.Sr.DR submitted that upgrading of technology gives enduring benefit to assessee and therefore cannot be revenue in nature. He placed reliance on orders passed by authorities below.

We have reduced submitted advance by both sides in light of records placed before us.

10.3 It is necessary to understand the circumstances in which assessee incurred these expenditure. The assessee is in the business of horseracing. It is necessary to have display televisions on towers when the race takes place. These televisions are used to display the race. Thus the televisions and television towers are an integral part of the business activity carried on by assessee. Further it is also a fact that assessee has to be technology upgraded to facilitate better performance. As technology keeps changing, assessee has to upgrade itself to benefit its business. Further it cannot be ignored that usual wear and tear of the televisions and the television towers needs replacement at regular intervals. Under such circumstances

expenditure incurred by assessee for re-modification of TV towers cannot be considered to be an enduring benefit.

10.4 We refer to the decision of *Hon'ble Supreme Court* in case of *Empire Co Ltd vs. CIT* reported in 124 ITA 1. *Hon'ble Court* held that, where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, nonetheless, be on revenue account, and the test of enduring benefit may break down. It is not that every advantage of enduring nature that brings the case within the principle laid down in this test, namely, whether the assessee obtained any asset of enduring nature. The court emphasised that, what is material to be considered is the nature of advantage in a commercial sense and it is only where the advantage is in the capital field that expenditure would be held as capital expenditure. It has also been held that, if the advantage consists merely in facilitating the assessee's business operation or enabling the management to conduct assessee's business more efficiently, the expenditure would be on revenue account, even though, the advantage may be of an indefinite future.

In present facts assessee incurred expenses on re-modification of TV towers which might, undergo further modification as and when the technologically upgraded cameras are brought in. It is submitted that the towers were remodified to fit in the new cameras purchased. Admittedly, the cameras purchased by assessee were capitalised on which depreciation is claimed. Thus in our view though expenditure do not have the character of enduring benefit, the advantage is not for indefinite future.

Accordingly, respectfully applying the principles laid down by *Hon'ble Supreme Court (supra)*, we hold the expenditure to be revenue in nature. We direct the Ld.AO to delete the disallowance made on expenses towards re-modification of TV towers.

Accordingly this ground raised by assessee stands allowed.

11. Ground No.5 is in respect of disallowance of expenditure incurred on constructing temporary stables, repairs to existing stables and gun greeting of such stables.

11.1 Ld.AR submitted that, this expenditure have been incurred to accommodate outstation horses that come to Bangalore to take part in races. It is submitted that assessee has deducted tax before making payment to the contractors. He submitted that these structures are temporary in nature and therefore has to be treated as revenue.

11.2 On the contrary, the Ld.Sr.DR submitted that, these structures are to be provided to outstation horses whenever the races take place. The structure is permanently made and therefore gives enduring benefit to assessee and has rightly treated as capital in nature.

We have perused submissions advanced by both sides in light of records placed before us.

11.3 We agree with the argument advanced by the Ld.Sr,DR that the structures are permanently made for outstation horses that come to Bangalore for races and therefore to be catagorised as capital asset.

11.4 We also note that assessee incurred repair work towards existing stables. We direct the Ld.AO to allow the expenditure incurred is towards repair work as revenue expenditure.

Accordingly this ground raised by assessee stands partly allowed.

12. Ground NO.6 is in respect of expenditure incurred on upgrading of UPS system under section 37 of the Act.

12.1 The Ld.AR submitted that, assessee incurred expenditure towards upgrading of existing UPS to support server installed during April 2012. He submitted that these are revenue in nature as it doesn't amount to an enduring benefit to assessee.

12.2 On the contrary, the Ld.Sr.DR submitted that, UPS is a support system that helps to keep the server running during power failures. From the description assessee upgraded to increased its capacity. The Ld.Sr.DR submitted that, this benefited assessee enduringly and therefore has to be treated as capital expenditure.

We have perused submissions advanced by both sides in light of records placed before us.

12.3 We note that the server installed in the racecourse premises was originally supported by UPS of 8 KVA. Assessee upgraded it to 16 KVA in the year 2012. The upgradation of UPS has brought into effect a new asset for advantage of assessee and therefore has to be treated as capital asset. However, assessee is eligible for depreciation. We direct the Ld.AO to grant depreciation to assessee on the UPS.

Accordingly this ground raised by assessee stands partly allowed.

13. Ground number 7 is consequential in nature and therefore do not require any adjudication.

Revenue Appeal

14. The Revenue is aggrieved by the treatment of expenditure incurred by assessee towards maintenance of betting systems and other equipments and asphaltting of roads to be revenue in nature by the Ld.CIT(A).

15. The Ld.Sr.DR submitted that expenses on betting systems and other equipments create enduring benefit to assessee. It is submitted that the roads are capital asset to assessee and the expenditure was incurred for asphaltting amount to capital expenditure.

16. On the contrary, the Ld.AR submitted that the expenses incurred are for maintaining the betting system and other equipments, and asphaltting of roads has to be routinely carried out by assessee. He submitted that, these expenditure are recurring in nature for maintenance purpose, intrinsically connect to assessee's business. He thus submitted that these expenditure are revenue in nature.

We have perused the submissions advanced by assessee in light of records placed before us.

17. We note that both these expenditure are incurred by assessee for maintenance of existing asset. It cannot be ignored that, there would arise wear and tear of machines used and the road on which horse racing takes place. These needs to be maintained on

regular basis for the purposes of business. We are therefore convinced with the view of Ld.CIT(A) that they are in the nature of revenue expenditure.

Accordingly, the grounds raised by revenue stands dismissed. In the result, appeal filed by assessee stands partly allowed and appeal filed by revenue stands dismissed.

Order pronounced in open court on 11th October, 2021.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 11th October, 2021.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.