

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

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

ITA No. 1455/Bang/2019
Assessment Year : 2017-18

M/s. Technova Tapes India Pvt. Ltd., No. 118, Anekal Bommasandra Industrial Area, Bangalore – 560 100. PAN: AABCT0877E	Vs.	The Deputy Commissioner of Income Tax, CPC, Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri H. Anil Kumar, CA
Revenue by	:	Smt. Priyadarshini Besaganni, JCIT (DR)

Date of Hearing	:	06-12-2021
Date of Pronouncement	:	27-12-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order dated 22/04/2019 passed by the Ld.CIT(A)-7, Bangalore on following revised grounds of appeal:

“1. The order of the learned CIT-(A) is against law, facts of the case and weight of evidence.

2. The learned Appellate Officer has erred in confirming action of the Deputy Commissioner of Income Tax CPC (the AO) in making addition u/s 143(1)(a) (iv) who is not authorised to make such adjustments under the Scheme notified by the Board.

3. The learned CIT-A has not appreciated that the proper opportunity was not afforded to appellant by the A.O. in

providing response to the adjustment proposed by him hence proceedings was against the rules of justice and fairplay.

4. The learned CIT-A has erred in upholding the adjustment when no reason given by the A.O for holding appellant's response as not acceptable.

5. The learned CIT-A has failed to appreciate that the intimation now passed without calling for the documents required to accompany the return but dispensed by the Board is bad in law.

6. The learned CIT-A has failed to appreciate that club expenditure reported by the auditor separately under Clause 21a, is expenditure other than personal in nature which is reported as required by the Guidance Note issued by ICAI.

7. The learned CIT-A failed to appreciate that no adjustment can be made under Section 143(1)(a) when matter is debatable.

For all of the above reasons, the intimation be set aside and addition of Rs. 94,017 directed to be made by CIT-A be cancelled.”

2. During the course of assessment proceedings the Ld.AO noticed that in Column No. 21(a) of Form No. 3CD of the Tax Audit Report it has been mentioned that the assessee company had debited expenses of Rs. 94,071/- towards fees, subscription and payment of services for various clubs such as Karnataka Golf Association, Bangalore Club, the Karnataka Cricket Association Club House The Ld.AO confronted the assessee on this issue. In compliance, it was stated that those expenses were incurred for entertaining the guest of the assessee to promote its business. However the Ld.AO did not accept the explanation of the assessee and made the disallowance of Rs.94,071/- under section 37(1) of the Act by treating it to be personal in nature.

Aggrieved by the Ld.AO, the assessee preferred appeal to the Ld.CIT(A).

3. After considering the submissions of assessee, the Ld.CIT(A) upheld the disallowance made by the Ld.AO, by observing as under:

“From the perusal of the guidance note above, it is clear that whether the club expenses are incurred in course of business or whether they are of personal nature should be ascertained and if they are personal in nature, then to be shown under clause 21(a). In this case as the club expenses are mentioned under clause 21(a) of Form 3CD by the auditor, it is evidently personal in nature. Hence, the adjustment in order u/s 143(1)(a) is found to be valid and inaccordance with law. Therefore, the contentions of the appellant are not sustainable.”

Aggrieved by the Ld.CIT(A), the assessee preferred appeal to this Tribunal.

4. It was contended that the assessee *had paid only subscription to club membership fee to promote the business promotion which is allowable as per the ratio laid down by the Hon'ble Supreme Court in the case of CIT Vs. United Glass Mfg. Co. Ltd., reported at (2012) 28 taxmann.com 429.* During the proceedings, it was argued that the expenses have been incurred for the business promotion of the company and the facilities have been used by the director as well as other employees of the company. Considering the submissions of the assessee, since the expenditure has been incurred for business promotion and for the purposes of the business of the assessee company, the disallowance made is deleted.

5. *The Ld.Sr.DR strongly supported the orders of the authorities below and reiterated the observation made therein.*

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

6. In the present case also the assessee has incurred the expenses on account of club membership fees for the employees and to entertain customers. An identical issue the *Hon'ble Madras High Court* in the case of *CIT Vs. Sundaram Industries Ltd.* reported in 240 ITR 335 held as under:

“Section 37 postulates that any expenditure laid out or expended wholly and exclusively for the purpose of the business or profession shall be allowed in computing the income of the assessee. The essential requirement for claiming the deduction of the expenditure is that the expenditure should have been incurred wholly and exclusively for the purposes of business of the assessee in the instant case, the assessee was a company and it was found by the Appellate Tribunal that the expenditure by way of subscription to the clubs was incurred for the purpose of promoting the business of the company and in view of the finding of the Tribunal, it must be held that the expenditure incurred was an allowable business expenditure. In the case of subscription to clubs, in so far as the assessee was concerned, the expenditure was incurred to promote and foster its business relationship. The object of the assessee was that its directors by remaining as members in some of the city clubs would give them certain social status, and it was obvious that by being members of the club, they would be able to meet various kinds of people in a calm and cool atmosphere of the club and because of the meeting they would develop business relationship, benefiting the assessee. Therefore, it could not be said that the possible advantage to the assessee was remote and far fetched. No doubt, there might be a personal benefit enjoyed by the director by the various types of amenities afforded at the club. But the personal benefit that went to the director was incidental to the membership of the club. The question whether a particular expenditure is allowable or not has to be tested from the point of view of the person expending the same and the object with which he incurred the expenditure. The assessee had not spent the money with the object of providing a personal relaxation to the director, but it was incurred to promote its business. In the commercial world, the contact with the right person is vital for an efficient business organisation. The expenditure incurred could not be regarded as having been incurred for the personal benefit of the director. In each case, it has to be seen whether the object of the expenditure was to promote the business of the assessee. In view of the finding by the Tribunal, the assessee-company had incurred the expenditure wholly and exclusively for the purpose of its business and therefore the expenditure incurred by way of subscription to the club was an allowable expenditure.”

7. On a similar issue the *Hon'ble Supreme Court* in the case of *CIT Vs. United Glass Mfg. (supra)* held as under:

*"3.3.As far as Question No. 1 is concerned, the issue is answered in favour of the assessee in the order passed today in civil appeal arising out S.L.P.(C) No. 20791 of 2009. As far as Question No. 2 is concerned, we find that a series of judgements have been passed by High Courts holding that club membership fees for employees incurred by the assessee is business expense under **Section 37** of the Income Tax Act, 1961. We also find that none of the decisions have been challenged in this Court. Even otherwise, we are of the view that it is a pure business expense."*

8. Respectfully following the above view, we direct the Ld.AO to delete the disallowance made under section 37(1) of the Act.

As we have allowed the appeal of assessee on merits, all other legal issues raised in this appeal is left open.

Accordingly appeal filed by assessee stands allowed.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in open court on 27th December, 2021.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 27th December, 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