

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **319/CHNY/2021**
निर्धारण वर्ष /Assessment Year: 2018-19

M/s. Rebar Design & Detail Pvt Ltd.,
45, Chamiers Road,
R A Puram, Chennai- 600 028.

DCIT,
v. CPC,
Bangalore.

PAN: AAECR-2348-K
(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. Abhishek Murali, CA
प्रत्यर्थी की ओर से/Respondent by : Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 01.06.2022
घोषणा की तारीख/Date of Pronouncement : 08.06.2022

आदेश /O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is arising out of the order passed by Commissioner of Income Tax- National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2021-22/033874129(1) dated 30.06.2021 for AY 2018-19 against the intimation u/s. 143(1) of the Income-tax Act, 1961 (herein after referred to as "the Act") issued by DCIT, CPC, Bangalore dated 03.07.2019.

2. At the outset, we find that there is a brief delay of 2 days in filing of this appeal. The assessee has filed a condonation petition. On perusal of the same, we are convinced that the assessee was prevented by sufficient cause from filing of the appeal in time. Hence, we condone the brief delay of 2 days and admit this appeal for adjudication.

3. The issue in appeal before us relates to adjustment made in the processing of return by CPC, Bangalore in respect of claim made by the assessee towards membership and subscription expenses of Rs. 18,39,466/- incurred at clubs being entrance fees and subscription for club services and facilities used.

4. Before us, Mr. Abhishek Murali, CA represented the assessee and Mr. AR V Sreenivasan, Addl. CIT represented the Department.

5. Brief facts of the case are that the assessee filed its return of income on 05.02.2019 reporting a total income of Rs. 37,85,120/- which was processed u/s. 143(1) of the Act vide intimation dated 03.07.2019 by CPC, Bangalore. In the processing of return, an amount of Rs. 18,39,466/- was disallowed and an adjustment was made to the total income which is on account of membership and

subscription expenses reported in Form 3CD i.e., tax audit report filed by the assessee. Aggrieved, the assessee went into appeal before the Ld. CIT(A) by raising the ground that AO has wrongly disallowed the club expenses on the ground that it is not a business expenses which in fact represents the sales promotion expenses incurred by the company for promotion of its business and ought to have been allowed as business expenses.

6. In the course of first appellate stage, assessee submitted that adjustment was made to the total income of the assessee in processing of the return u/s. 143(1) of the Act, based on the information provided in Form 3CD filed by the auditor which was made without properly appreciating the correct facts and the legal provisions. It was submitted by the assessee that the amount of Rs. 18,39,466/- represents membership and subscription expenses. The CEO and the Managing Director of the company is a member in Kodaikanal Club, Young President Organization and Madras Cricket Club and has incurred Rs. 5,79,370/-, Rs. 10,46,016/- and Rs. 2,14,080/- respectively. It was further contended by the assessee that the Young President Organization is a world wide body where the young presidents of organization across the globe are members and through membership the company establish contacts with major business

heads across the globe. The club memberships helps the organization to grow in terms of its revenue and profits. Similarly, was the case with membership in other two institutions namely, Kodaikanal Club and Madras Cricket Club. It was also contended by the Ld Counsel that by incurring these expenses of membership and subscription of clubs, the financial results of the company had significantly improved. Ld. Counsel relied on certain decision, one in the case of CIT vs United Glass Mfg. Co. Ltd [2012] 28 taxmann.com 429 (SC) and another in the case of CIT vs Sundaram Industries 240 ITR 335 (Mad).

7. While disposing the appeal, Ld. CIT(A) noted that DCIT, CPC, Bangalore had disallowed the claim made by the assessee towards membership and subscription expenses for which the data was captured from the tax audit report filed in Form 3CD by the assessee itself. In Form 3CD, clause 21(a) contains the details of amount debited to the profit and loss account which are in the nature of capital/personal/advertisement expenditure, etc. He noted that the tax auditor himself had qualified the amount i.e., expenditure incurred at club as personal in nature at Rs. 18,39,466/-. Ld. CIT(A) also noted that the auditor has to categorize the expenditure incurred at clubs in clause 21(a) of the auditor report being entrance fees and subscription and expenditure incurred at clubs being cost for club services and

facilities used. Accordingly, the payment may be made in two categories, one for entrance fees and subscription and the second one as cost for club services and facilities used. Ld. CIT(A) dismissed the appeal of the assessee by holding that these expenses being personal/capital in nature cannot be allowed as expenditure in terms of provisions of section 37(1) of the Act, as these expenditure have been certified by the tax auditor as personal/capital in nature. Aggrieved, the assessee is in appeal before this Tribunal.

8. Ld. Counsel of the assessee reiterated the submissions made by him before the Ld. CIT(A). In the course of hearing, in addition to the judgments relied upon by the counsel of the assessee before the Ld. CIT(A), he placed on record judgments of Hon'ble High Court of Karnataka in the case of *Ingersoll-Rand (India) Ltd vs CIT* (2020) 122 taxmann.com 85 (Kar) and by Hon'ble High Court of Kerala in the case of *Apollo Tyres Ltd vs DCIT* (2021) 130 Taxmann.com 296 (Kerala). Ld. Sr. DR. supported the decision of Ld. CIT(A) and relied upon the decision of Hon'ble High Court of Madras in the case of *L. Jairam Parwani vs DCIT* (2018) 93 taxmann.com 291 (Mad).

9. We have heard the rival contentions, considered the material placed on record and gone through the various judgments relied upon

by both the parties. It is undisputed fact that the disclosure was made in Form 3CD i.e., tax audit report by the tax auditor in clause 21(a) which requires furnishing of details of amount debited in profit and loss account, being in the nature of capital, personal, advertisement expenditure, etc. In respect of issue before us, there are two categories under which the details are to be furnished in terms of clause 21(a) of Form 3CD:

(i) expenditure incurred at clubs being entrance fees and subscription &

(ii) expenditure incurred at clubs being cost for club services and facilities used.

For the adjustments of Rs. 18,39,466/- made by DCIT, CPC, Bangalore to the total income of the assessee while processing the return u/s. 143(1) of the Act, the reasons given in the intimation is "inconsistency in total amount of disallowance u/s. 37" for which the amount mentioned in Form 3CD is taken at Rs. 18,39,466/- and amount in income tax return as Rs. 7,80,121/-. From the records placed before us and the submissions made by the Ld. Counsel it is not discernable whether this amount of Rs. 18,39,466/- falls under which of the two categories mentioned above i.e., whether it represents expenditure incurred at clubs being entrance fees and subscription or it represents

expenditure incurred at clubs being cost for club services and facilities used.

10. On perusal of the judgments relied upon by the parties, the commonality of decisions in these judgments is that expenses incurred towards club membership fees and subscription for employees have been held to be business expenditure allowable u/s. 37(1) of the Act. Expenditure incurred for availing services in the club have been held to be not allowable as business expenditure within the meaning of section 37(1) of the Act. In view of these facts and judicial precedents, it is important to ascertain whether expenses incurred by the assessee are claimed as deductible which are incurred in the course of business towards club membership or whether they are in respect of availing of services and facilities at the club. It is also required to ascertain whether they are of personal nature or otherwise for the purpose of allowance. Section 37(1) of the Act provides that expenditure incurred which are fully and exclusively for the purpose of business are to be allowed. Accordingly, we find it proper to remit the matter back to the file of the Ld. AO for the limited purpose of verification of these expenses of Rs. 18,39,466/- claimed by the assessee as club membership and subscription expenses for the purpose of allowability. The AO is directed to ascertain under which bucket these expenses fall

as referred in (i) & (ii) of para 9 above. Based on his examination and verification and categorization of expenses in each of the two bucket referred above, the amount of expenses incurred in respect of club membership and subscription fees only shall be allowed as business expenditure u/s. 37(1) of the Act. Needless to say, the assessee be given reasonable opportunity of being heard and be at liberty to make all of its submissions to justify its claim. Accordingly, the appeal of the assessee is allowed for statistical purposes.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 08th June, 2022 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(गिरीश अग्रवाल)

(GIRISH AGRAWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 08th June, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |