

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE,
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.8285/Del/2019
(ASSESSMENT YEAR 2012-13)**

**ITA No.8286/Del/2019
(ASSESSMENT YEAR 2013-14)**

Deputy Commissioner of Income Tax Circle-9(1), New Delhi	Vs.	M/s Federal Mogul Goetze (India) Ltd. 10, Ground Floor, F-79 & 80, Okhla Phase-I, DLF Prime Towers, New Delhi-110 020 PAN-AAACG3769M
(Appellant)		(Respondent)

Appellant by	Sh. Shankar Lal Verma, Senior Departmental Representative ("Sr. DR" for short)
Respondent by	Sh. Vishal Kalra, Advocate

ORDER

PER ANADEE NATH MISSHRA, AM

(A) These two appeals have been filed by Revenue against two separate orders of Learned Commissioner of Income Tax (Appeals)-44, New Delhi ["Ld. CIT(A)", for short], each dated 31/07/2019, for Assessment Years 2012-13 and 2013-14. For the

sake of convenience, these two appeals are hereby disposed off though this consolidated order. Grounds taken in both appeals are as under:

ITA No.8285/Del/2019 for AY 2012-13

“1. On the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of club membership expenses amounting to Rs.91,592/-.

2. On the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Royalty expenses amounting to Rs.3,44,98,250/-.

3. On the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance made by the Assessing Officer u/s 40(a)(ia) of the I.T. Act, on account of non-deduction of tax on bank charges of Rs.78,24,973/-.

4. The appellant craves leave to add, amend or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

ITA No.8286/Del/2019 for AY 2013-14

“1. On the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of club membership expenses amounting to Rs.6,06,000/-.

2. On the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Royalty expenses amounting to Rs.3,35,61,000/-.

4. The appellant craves leave to add, amend or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

(B) At the outset, the Ld. Counsel for the assessee submitted that all the issues in dispute in these two appeals are squarely covered in favour of the assessee and against Revenue. In support of this submission, the Ld. Counsel for the assessee placed reliance on compilation of the following orders, filed in the course of appellate proceedings in Income Tax Appellate Tribunal (“ITAT” for short):

Sl. No.	Particulars
1.	Order dated January 20, 2012 passed by the Hon'ble Tribunal for AY 2004-05 in Assessee's own case
2.	Order dated September 17, 2010 passed by the Hon'ble Tribunal for AY 2006-07 in Assessee's own case
3.	Order dated October 16, 2017 passed by the Hon'ble Tribunal for AY 2008-09 in Assessee's own case
4	Order dated July 24, 2012 passed by the Hon'ble Delhi High Court in the case of Assessee's group company (royalty issue)
5	Order dated July 12, 2017 passed by CIT(A) for AY 2014-15 in Assessee's own case
6	Order dated February 24, 2016 passed by CIT(A) for AY 2010-11 in Assessee's own case
7	Order dated March 27, 2015 passed by CIT(A) for AY 2009-10 in Assessee's own case
8	Assessment order dated January 30, 2016 passed for AY 2011-12 under section 143(3) of the Act
9	Assessment order dated December 23, 2018 passed for AY 2011-12 under section 148/143(3) of the Act
10	CBDT Notification No.56/2012 (Bank Charges)
11	Onkareshwar Properties (P) Ltd. vs. ACIT (ITA No.1823/Del/2015) (Del.Trib.)
12	DCIT vs. RRB Energy Ltd. (ITA No.5155/Del/2016) (Del-Trib.)
13	National Building Construction Corporation Ltd. vs. Addl. CIT (ITA No.756 & 1598/Del/2015) (Del-Trib.)

(C) The issue regarding the assessee's claim for expenditure on account of club membership expenses is common in both Assessment Years 2012-13 and 2013-14. The quantum involved is Rs.91,952/- in AY 2012-13 and Rs.6,06,000/- in AY 2013-14. The Ld. Counsel for assessee submitted that this issue is squarely covered in assessee's favour vide order dated 16/10/2017 of Co-ordinate Bench of ITAT in assessee's own case for AY 2008-09 in ITA No.1521 and 1895/Del/2013. In particulars, he drew our attention to the following relevant portion of the aforesaid order dated 16/10/2017 of Co-ordinate Bench of ITAT, Delhi, in which, in identical facts and circumstances, the issue regarding club membership expenses was decided in favour of the assessee, and against Revenue:

"9. So far as the first issue is concerned, the facts as culled out from the impugned orders are that, the Assessing Officer noted that the assessee has paid sum of Rs.8,22,630/- towards 'club expenses' which has not been added to back to the income by the assessee. He held that, club expenses cannot be held to be for the purpose of business, and hence same needs to be disallowed. The Ld. CIT(Appeals), after considering the entire submission and material placed on record, noted that the amount paid by the assessee towards club expense was in the nature of entrance fees, annual fees, life membership fees, and reimbursement of expenses incurred by the executives on club. Tire Ld. CIT(A)

following the judgments of Hon'ble Jurisdictional High Court in the case of **CIT vs. Samtel Color Ltd. (2010) 326 ITR 425 (Del)** and **CIT vs. Nestle India Ltd. (2008) 296 ITR 682 (Del.)**, held that the club membership fees, life membership fees or annual fees, for the benefit of the employees is allowable the expenditure and accordingly, deleted the said disallowance.

10. The Ld. DR. submitted that the Assessing Officer has made disallowance on the ground that the assessee could not show the purpose of business for incurring such expenditure and onus was upon the assessee to prove that not only the details of expenditure are corroborated by the evidence but also it has been incurred for the purpose of business.

11. On the other hand the Ld. Counsel drew our attention to the details appearing at page 74 of the paper book and pointed that the entire payments made to various clubs were towards subscription/membership charges and relied upon the judgments referred by the Ld. CIT(Appeals) in his order and submitted that no disallowance should be made.

12. After considering the rival submissions and on perusal of the material referred to before us, we find that the nature of payment under the head club expenses is subscription and membership charges'. If the expenditure has been incurred by way of admission fees to obtain the corporate membership of the club, then such expenditure on club membership fees, has to be allowed in view of the ratio and principle laid down by the Hon'ble Delhi High Court in the case of **CIT vs. Sanitel Color Ltd. and CIT vs. Nestle India Ltd. (supra).....”**

(C.1) The Ld. Counsel for the assessee further placed reliance on the following decisions:

- *CIT vs. Samtel Color Ltd. [2010] 326 ITR 425 (Delhi)*
- *CIT vs Sundaram Industries Ltd. 240 ITR 335 (Madras)*
- *CIT vs Nestle India Limited [2008] 296 ITR 682 (Delhi)*

- *S.A. Builders Ltd. vs CIT [2007] 288 ITR 1 (SC)*
- *Sasoon J. David & Co. Pvt. Ltd. vs CIT [1979] 118 ITR 261 (SC)*
- *Shahzada Nand & Sons vs CIT 108 ITR 358 (SC)*
- *CIT vs Chandulal Keshavlal & Co. [1960] 38 ITR 601 (SC)*

(C.1.1) Ld. Counsel for the assessee also submitted that the disallowances in respect of club membership expenses was deleted by the Ld. CIT(A) in assessee's own case for Assessment Years 2009-10, 2010-11 and 2014-15, and he added that Revenue was not in appeal against these orders of the Ld. CIT(A) on the issue of club membership expenses. The Ld. Counsel for the assessee further submitted that no additions are being made by the Assessing Officer in assessee's own case on account of club membership expenses, after AY 2014-15.

(C.2) The Ld. Sr. DR relied on the respective assessment orders for AYs. 2012-13 and 2013-14.

(C.2.1) We have heard both sides. We have perused the materials on record. It is not in dispute that in identical facts and circumstances, the issue has also been decided in favour of the

assessee and against Revenue, by aforesaid order dated 16/10/2017 of Co-ordinate Bench of ITAT, Delhi in assessee's own case for AY 2008-09. It is also not in dispute that the similar additions made in assessee's own case for AYs 2009-10, 2010-11 and 2014-15 were deleted by the Ld. CIT(A) and Revenue is not in appeal against these orders of the Ld. CIT(A) on the issue of club membership expenses. It is further not in dispute that no additions are being made in the assessee's own case after AY 2014-15 on account of disallowance of club membership expenses. Moreover, neither side has brought any distinguishing facts or circumstances or legal submissions or judicial precedents to our attention or for our consideration to persuade us to take a view different from view already taken by Co-ordinate Bench of ITAT, Delhi in assessee's own case in aforesaid order dated 16/10/2017 for AY 2008-09 in ITA Nos.1521 and 1895/Del/2015. Neither side has brought any materials for our consideration to persuade us to interfere with the impugned order of Ld. CIT(A). In view of foregoing, in the specific facts and circumstances of the two appeals before us, and

respectfully following the aforesaid order dated 16/10/2017 of Co-ordinate Bench of ITAT, Delhi in assessee's own case, we decline to interfere with the impugned order of Ld. CIT(A), and we decide the issue regarding club membership expenses in the present two appeals before us, in favour of the assessee and against Revenue, for AYs 2012-13 and 2013-14 too. Accordingly, ground No.1 of appeal in each of AY 2012-13 and AY 2013-14 is dismissed.

(D) The second ground of appeal in each of two appeals for AY 2012-13 and AY 2013-14 pertains to disallowance of royalty expenses. The quantum involved is Rs.3,44,98,250/- in AY 2012-13 and Rs.3,35,61,000/- in AY 2013-14. The Ld. Counsel for the assessee submitted that this issue is squarely covered by the order dated 20/01/2012 for AY 2004-05 in ITA No.2302/Del/2009 and order dated 17/09/2010 for AY 2006-07 in ITA No.765/Del/2010 passed by Co-ordinate Bench of ITAT, Delhi in assessee's own case in which the issue regarding disallowance of royalty expenses was decided in favour of the assessee and against Revenue, in identical facts and circumstances. Ld. Counsel for the

assessee also submitted that on identical facts and circumstances similar additions made in AYs 2008-09, 2009-10, 2010-11 and 2014-15 were deleted by the Ld. CIT(A) and he added that Revenue was not in appeal against orders of the Ld. CIT(A) for these years on the issue of disallowance of royalty expenses. He further submitted that the additions on account of royalty expenses have not been made by the Assessing Officer in AY 2011-12 or in any year after AY 2014-15. The Ld. Counsel for the assessee submitted that on identical facts and circumstances, the Hon'ble Delhi High Court which is the jurisdictional High Court, has decided this issue in favour of the assessee and against Revenue in the case of CIT vs. M/s Federal Mogul TPR India Ltd. vide order dated 24/07/2012 in ITA No.398/2012 reported at 2012-TIOL-563-HC-DEL-IT. The Ld. Counsel for the assessee also placed further reliance on the following decisions:

- *CIT vs J.K. Synthetics Limited [2009] 309 ITR 371 (Delhi)*
- *CIT vs Sharda Motor Industrial Ltd. [2009] 319 ITR 109 (Delhi)*
- *Climate Systems India Ltd. vs CIT [2009] 319 ITR 113 (Delhi)*
- *J.J. Enterprises vs CIT: [2002] 254 ITR 216 (SC)*
- *Roger Enterprises Pvt. Ltd. vs IAC: [1995] 52 TTJ 198 (Del)*
- *CIT vs Aero Club: [2011] 336 ITR 400 (Del)*

- *Mahendra Oil Cake Industries Pvt. Ltd. Vs ACIT (1996) 55 TTJ 711 (Ahd)*
- *Vijay C. Kamdar vs ITO [2009] 118 ITD 577 (Mumbai Trib.)*
- *Ador Technologies Ltd. Vs DCIT (2.007) 112 TTJ 24 (Pune)*

(D.1) The Ld. Sr. DR for Revenue relied on the orders passed by the Assessing Officer.

(D.2) It is not in dispute that the issue regarding disallowance of royalty expenses, in the present appeals before us, is squarely covered in favour of the assessee and against Revenue vide aforesaid orders in M/s. Federal Mogul TPR India Ltd. (supra) and vide aforesaid orders dated 20/01/2012 and 17/09/2010 passed by Co-ordinate Bench of ITAT Delhi in assessee's own case. Neither side has brought any distinguishing facts or circumstances or legal submissions or judicial precedents to our attention or for our consideration to persuade us to take a view different from view already taken by Co-ordinate Bench of ITAT, Delhi in assessee's own case in aforesaid order dated 16/10/2017 for AY 2008-09 in ITA Nos.1521 and 1895/Del/2015. Neither side has brought any

materials for our consideration to persuade us to interfere with the impugned appellate order of Ld. CIT(A).

(D.2.1) In view of foregoing, in the specific facts and circumstances of the two appeals before us, and respectfully following the order of Hon'ble Delhi High Court in the case of CIT vs. Federal Mogul TPR India Ltd. (supra); and also respectfully following the aforesaid orders of Co-ordinate Benches of ITAT, Delhi dated 20/01/2012 and 17/09/2010; we decide the issue regarding disallowance of royalty expenses in the present two appeals before us for AYs 2012-13 and 2013-14 too, in favour of the assessee, and against Revenue. Accordingly, ground no.2 of appeal in each of AYs 2012-13 and 2013-14 is dismissed.

(E) In AY 2013-14, the 3rd Ground of appeal pertains to disallowance of bank charges. The Assessing Officer disallowed an amount of Rs.78,24,973/-, which was deleted by the Ld. CIT(A) in the impugned appellate order dated 31/07/2019. At the time of hearing, the Ld. Counsel for the assessee submitted that this issue

is squarely covered in favour of the assessee and against Revenue vide orders of Hon'ble Delhi High Court, which is the jurisdictional High Court, in the cases of CIT vs. JDS Apparels (P.) Ltd. [2015] 370 ITR 454 (Delhi) and PCIT vs Make My Trip Pvt. Ltd. 104 taxmann.com 263 (Delhi). He further submitted that the issue is also covered in favour of the assessee and against Revenue by orders of Co-ordinate benches of ITAT, Delhi in the cases of National Building Construction Corporation Ltd. (order dated 14/05/2018 in ITA Nos.756 & 1598/Del/2015 for AY 2011-12) and in the case of Onkareshwar Properties (P) Ltd. (order dated 21/01/2019 in ITA No.1823/Del/2015 for AY 2011-12).

(E.1) On perusal of the impugned appellate order dated 31/07/2019 of the Ld. CIT(A), we find that the Ld. CIT(A) has deleted the aforesaid additions of Rs.78,24,973/, the aforesaid orders of Hon'ble Delhi High Court in the cases of CIT vs. JDS Apparels (P.) Ltd. (supra) and PCIT vs Make My Trip Pvt. Ltd.(supra) observing that material facts of the case are the same.

(E.2) The Ld. Sr. DR for Revenue relied on the order passed by the Assessing Officer.

(E.2.1) It is not in dispute that the issue regarding disallowance of bank charges in the present appeal before us is squarely covered in favour of the assessee by aforesaid orders of Hon'ble Delhi Court in the case of CIT vs. JDS Apparels (P.) Ltd. (supra) and PCIT vs Make My Trip Pvt. Ltd. (supra); and by the aforesaid orders dated 14/05/2018 and 21/01/2019 of Co-ordinate Benches of ITAT, Delhi in cases of National Building Construction Corporation Ltd. (supra) and in the case of Onkareshwar Properties (P.) Ltd. (supra), respectively. Neither side has brought any distinguishing facts or circumstances or legal submissions or judicial precedents to our attention or for our consideration to persuade us to take a view different from view already taken by Co-ordinate Benches of ITAT, Delhi in aforesaid order dated 14/05/2018 in the case of National Building Construction Corporation Ltd. (supra) and in the aforesaid order dated 21/01/2019 in the case of Onkareshwar Properties (P) Ltd. (supra). Neither side has brought any materials for our

consideration to persuade us to interfere with the impugned appellate order of Ld. CIT(A). In view of foregoing, and respectfully following the aforesaid orders of Hon'ble Delhi High Court in the cases of CIT vs. JDS Apparels (P.) Ltd. (supra) and PCIT vs. Make My Trip Pvt. Ltd. (supra), and also respectfully following the orders of Co-ordinate Bench of ITAT, Delhi in the aforesaid cases of National Building Construction Corporation Ltd. (supra) and Onkareshwar Properties (P.) Ltd. (supra); we decide the issue in dispute regarding disallowance of bank charges in the present appeal for AY 2012-13, in favour of assessee, and against Revenue. Accordingly, the 3rd ground of appeal in AY 2012-13, is dismissed.

(F) In the result, both the appeals filed by Revenue are dismissed. Order pronounced in the Open Court on 16/09/2022.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 16/09/2022

Pk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW, DELHI