

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

**BEFORE,  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.199/Del/2021  
(ASSESSMENT YEAR 2018-19)**

Mehra and Sistani Apptt. 101, I-22 Jangpura Extension New Delhi-110 014 PAN-AAAFM 0035H <b>(Appellant)</b>	Vs.	DCIT, CPC Bengaluru     <b>(Respondent)</b>
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Appellant by	Mr. Sanjiv Rai Mehra, CA
Respondent by	Mr. Jeetender Chand, Senior Departmental Representative ("Sr. DR" for short)

**ORDER**

**PER ANADEE NATH MISSHRA, AM:**

(A) This appeal has been filed by the Assessee against the impugned appellate order dated 09/09/2020 of Learned Commissioner of Income Tax (Appeals)-20, Delhi ["Ld. CIT(A)", for short], wherein the Ld. CIT(A) confirmed the addition of Rs.4,25,497/- made by the Assessing Officer ("AO" for short) by way of adjustment and intimation u/s 143(1) of Income Tax Act ("IT Act"

for short). The aforesaid addition of Rs.4,25,497/- was made on account of disallowance of Club Expenses, vide intimation dated 22/10/2019 issued by the Assessing Officer u/s 143(1) of IT Act. The assessee made submissions before the AO and also before the Ld. CIT(A), contending that the expenses were incurred exclusively and wholly for the business purposes and no disallowance was called for. However, not only was the addition made u/s 143(1) of IT Act vide aforesaid intimation dated 22/10/2019; but also, the Ld. CIT(A) confirmed the addition and dismissed assessee's appeal; without taking the assessee's objections/submissions into consideration. Aggrieved, the assessee has filed this present appeal in Income Tax Appellate Tribunal. The decision of Ld. CIT(A), and the AO, both, was based on the fact that the Auditor had reported an amount of Rs.4,25,497/- as Club Expenses in the Audit Report, under clause 21(a) of the Audit Report, under the description "Club Services".

(A.1) At the time of hearing before us, the Ld. Authorized Representative ("Ld. AR" for short) of the assessee submitted that the issue regarding allowability of Club Expenses was squarely

covered in favour of the assessee and against Revenue, vide order of Hon'ble Supreme Court in the case of *Commissioner of Income Tax Vs. United Glass Manufacturing Company Ltd.* [2012] 28 *taxmann.com* 429 (SC). He further submitted that the issue was also decided in favour of the assessee and against the Revenue vide order dated 23/09/2022 of Income Tax Appellate Tribunal ("ITAT" for short) in the case of M/s ISGEC Heavy Engineering Ltd. Vs. DCIT in ITA No.798/Chd/2019 for AY 2016-17, wherein the issue was decided in favour of the assessee after considering the following judicial precedents in which the issue was decided in favour of the assessee:

- (i) *CIT vs. United Glass Mfg. Co. Ltd. reported in 28 taxmann.com 429 (SC)*
- (ii) *CIT vs. Samtel Color Ltd. 180 taxmann.com 82 (Del)*
- (iii) *CIT vs. Nestle India Ltd. 296 ITR 682 (Del)*
- (iv) *CIT vs. Sundaram Industries Ltd., 240 ITR 335 (Mad)*
- (v) *DCIT vs. Deloitte Touche Tohmatsu in ITA No.3017/Mum/2016 (Mum-Trib.) order dated 27/04/2018*

(A.1.1) In view of the aforesaid judicial precedents in the cases of *CIT vs. United Glass Mfg. Co. Ltd. reported in 28 taxmann.com 429 (SC)*; *CIT vs. Samtel Color Ltd. 180 taxmann.com 82 (Del)*; *CIT vs.*

*Nestle India Ltd. 296 ITR 682 (Del); CIT vs. Sundaram Industriels Ltd. 240 ITR 335 (Mad); DCIT vs. Deloitte Touche Tohmatsu in ITA No.3017/Mum/2016 (Mum.Trib.) order dated 27/04/2018; and M/s ISGEC Heavy Engineering Ltd. vs. DCIT (supra)* it was strongly contended by the Ld. AR for the assessee that the aforesaid addition of Rs.4,25,497/- deserved to be deleted.

(A.2) The Ld. Sr. DR for Revenue relied on the impugned appellate order of the Ld. CIT(A) and the aforesaid intimation dated 22/10/2019 issued u/s 143(1) of IT Act.

(A.2.1) We have heard both sides. We have perused the materials on record. There is nothing in the records to suggest that in the facts and circumstances of the present case, the aforesaid amount of Rs.4,25,497/- incurred by way of Club Expenses by the appellant assessee, was partly or wholly incurred for non business purposes. It is also not in dispute that the issue regarding allowability of Club Expenses is covered in favour of the assessee and against Revenue by aforesaid orders in the cases of *CIT vs. United Glass Mfg. Co. Ltd. reported in 28 taxmann.com 429 (SC); CIT vs. Samtel Color Ltd. 180*

*taxmann.com 82 (Del); CIT vs. Nestle India Ltd. 296 ITR 682 (Del); CIT vs. Sundaram Industrieis Ltd. 240 ITR 335 (Mad); DCIT vs. Deloittee Touche Tohmatsu in ITA No.3017/Mum/2016 (Mum.Trib.) order dated 27/04/2018; and M/s ISGEC Heavy Engineering Ltd. vs. DCIT (supra). Further, we take guidance from the order of Hon'ble Delhi High Court; which is the jurisdictional High Court; in the case of Pr. CIT Vs. IL & FS Energy Development Company Ltd. [2017] 399 ITR 483 (Delhi) / [2017] 250 Taxman 174 (Delhi). In this case, it was held by Hon'ble Delhi High Court, that the mere fact that in the Audit Report the Auditors may have suggested that there should be a disallowance cannot be determinative of the legal position; and further, that the assessee was not precluded from taking a stand that no disallowance was called for u/s 14A of IT Act. Following this ratio, we are of the view that the assessee in the present case was not precluded from taking the stand that no disallowance of the claim of Rs.4,25,497/- claimed by the assessee as Club Expenses was called for, despite the fact that the Auditor had reported this amount in the Audit Report under the description "Club Services". In view of foregoing; and in the specific facts and circumstances of*

the present case before us, we set aside the impugned appellate order dated 09/09/2020 of Ld. CIT(A) and we direct the Assessing Officer to delete the aforesaid addition of Rs.4,25,497/-.

(B) In the result, this appeal of the assessee is allowed.

Order pronounced on 22/11/2022

Sd/-  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Sd/-  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 22/11/2022

*Pk*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW, DELHI