

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.1757/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2014-15)

New Globe Logistik Pvt. Ltd. (Now known as New Globe Logistick LLP) 44, Khatau Building, Shahid Bhagat Singh Road, Fort, Mumbai-400001.	बनाम/ Vs.	ITO-2(3)(3) Aayakar Bhavan, Mumbai-400023.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACN3625M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Nishit Gandhi
Revenue by:	Shri Anil Gupta

सुनवाई की तारीख / Date of Hearing: 01/03/2023
घोषणा की तारीख /Date of Pronouncement: 25/05/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order of the Ld. CIT(A)-5, Mumbai dated 29.10.2019 for AY. 2014-15.

2. At the outset, it is noted that there is considerable delay in filing of the appeal. The impugned order of the Ld. CIT(A) was passed on 29.10.2019; however, according to assessee, the delay caused in filing of appeal cannot be attributed on assessee because the brief of the case was entrusted to Ld. AR/CA Shri Uday Soman who did not inform promptly about the outcome of the impugned order to the assessee till 15.11.2019. And immediately thereafter, he entrusted the appeal to be filed to the lawyer and though he wanted to file the appeal before the Tribunal in Jan, 2020, the Covid-19 Pandemic had set in by early March, 2020. And thereafter, the assessee could file the same only in



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June, 2021. So therefore, there was a delay of around six hundred (600) days. According to Ld. AR, if the period of Covid-19 is excluded, then the total number of days to be condoned would come to around ninety (90) days. After perusing the application of the assessee, it is found that due to the Covid-19 as well as the omission on the part of earlier Ld. AR of the assessee to promptly inform the assessee about the outcome of the order of Ld. CIT(A), the delay happened, which cannot be termed as deliberate on the part of assessee. Therefore, the delay caused after excluding Covid-19 Pandemic period comes to ninety (90) days only, the delay caused in filing of appeal is condoned.

3. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the action of the Ld. CIT(A) disallowing an amount of Rs.22,60,000/- being club membership fees paid to Cricket Club of India as non-genuine and for non-business related expense.

4. Brief facts are that the assessee had filed the return of income declaring total loss of Rs.5,87,677/- on 25.09.2014 for AY. 2014-15. The case was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter "the Act"). Later, the case was selected under CASS. The AO noted that the assessee company is engaged in the business of freight forwarding for import and export cargo by air and sea and provide logistic support to its client during the year. The company was converted into Limited Liability Partnership (LLP) which has taken over all assets and liabilities from 09.04.2013. The AO noted that the assessee had paid subscription of Rs.22,60,000/- on 08.04.2013 i.e. last date of business operation of the company to Cricket Club of India. (M/s. CCI). According to the AO, since the assessee had closed/wound



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up its business on 08.04.2013, there was no necessity (business) to incur such an expenditure and therefore it cannot be allowed. So, he added the same as income of the assessee. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the action of the Ld. CIT(A). Aggrieved, the assessee is before us.

5. I have heard both the parties and perused the records. The assessee company was operational in the relevant financial year on 01.04.2013 to 08.04.2013; and the payment made by it to the Cricket Club of India was made on 08.04.2013 i.e. Last date of operation. And the next day, company got converted into LLP; and the LLP has taken over all assets and liabilities and is continuing the business operated by the assessee company. The assessee has subscribed for membership of the Cricket Club of India by making payment of Rs.22,60,000/- on 08.04.2013 which has been claimed as expenditure which was disallowed by the AO on the reason that the assessee failed to prove that the expenditure was wholly for the purpose of business by mainly taking note that assessee company has wound up its business on 08.04.2013 and so, he disallowed it. The Ld. CIT(A) has confirmed the action on the reason that even though the assessee company has made the payment of Rs.22,60,000/- for the membership, the director of the assessee company Shri Anand Didwania got 'Membership' in the category of "Member's Son Category" which is in the category of individual membership. And therefore, the expenditure cannot be allowed as a deduction. The Ld. AR brought to my notice that the expenditure incurred for club membership is allowable expenditure and cited the decision of the Hon'ble Supreme Court in the case of CIT



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Vs. United Glass MFG Co. Ltd. (Civil Appeal No. 6447 of 2012) and others dated 12.09.2012 wherein the question of law raised in the appeal are as under: -

“(i) Whether advance customs duty paid by the assessee can be deducted under section 43-B of the Income Tax Act, 1961?

(ii) Whether club membership fee for employees incurred by the assessee is a business expense and liable to be deducted under section 37(1) of the Income Tax Act, 1961?

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 is a pure business expense.”

6. The assessee also brought to my notice similar order of the Kolkata Tribunal in the case of M/s. MKJ Tradex Ltd. Vs. DCIT dated 14.02.2018 as under: -

“12. We have heard the rival contentions and perused the material available on record. We find that in the instant case the AO disallowed the club expenses claimed by the assessee on the ground that these were not incurred for the purpose of the business. The view taken by the AO was partly confirmed by the Ld CIT(A). Now the issue before us arises for the adjudication so as to whether the club expenses incurred by the assessee are having any nexus with the business of the assessee in the aforesaid facts and circumstances. In this connection, we find



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that the clubs provided several kinds of facilities such as conferences, business meetings, as well as provision for multimedia exhibition. Many clubs allow membership to companies or other business entities. The membership is given in name of company or other concern. It is very well known that the clubs are a platform to meet people. The meetings can be privately organized or can be in the course of mass meetings or gatherings at the time of functions or celebrations at club. By visiting clubs, chances of making new contacts improve. With new contacts people can do more interactions which can be beneficial for business and profession. Therefore business organizations like company, firm, bank, co-operative society etc. functions through human agencies which may be directors or other officers of business organization. Therefore, business organizations provide facility to their officers to attend and avail services of clubs. Clubs make company or other business organization as its member.

This is generally called as corporate membership. The expenses may be in nature of entrance fees, annual fees, life membership fees and reimbursement of actual expenses etc. The purpose of the expenditure is to have a suitable platform for meeting people and getting advantages of meeting many people at a time to maintain old contacts and also to make new contacts. The main purpose of the organization is to induce its officers to attend such places for maintaining and making contacts for the benefit of business. Even if some personal advantage is obtained by officers, it will be in nature of maintaining good relations with officers and in nature of staff welfare expenses. Therefore, the expenses are incurred wholly and exclusively for the purpose of business. By obtaining membership for a period of more than



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one year, there may be an advantage of enduring nature. However, such advantage is in the field of revenue benefit and not for obtaining any capital asset or obtaining benefit in capital field. Therefore such expenses will be of revenue nature.

In this regard we find support & guidance from the judgment of Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Groz Beckert Asia Limited reported in 351 ITR 196 wherein it was held as under :

“The corporate membership was obtained for running the business with a view to produce profit. Such membership does not bring into existence an asset or an advantage for the enduring benefit of the business. It is an expenditure incurred for the period of membership and is not long lasting. By subscribing to the membership of a club, no capital asset is created or comes into existence. By such membership, a privilege to use facilities of a club alone, are conferred on the assessee and that too for a limited period. Such expenses are for running the business with a view to produce the benefits to the assessee. Consequently, it cannot be treated as capital asset.”

We also find support & guidance from the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Samtel Color Limited reported in 326 ITR 425 wherein it was held as under :

“The expenditure incurred towards admission fee was towards corporate membership. The nature of the expenditure was one for the benefit of the assessee. The 'business purpose' basis adopted for eligibility of expenditure under section 37 was the correct approach. That was more so in view of the Tribunal's findings that it was the assessee which nominated the employees who would avail the benefit of corporate membership given to the assessee. [Para 5.1]



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The other hurdle for qualification of the expenditure under section 37 is that expenditure incurred should not be on capital account. It is well-settled that an expenditure which gives enduring benefits is, by itself, not conclusive as regards the nature of the expenditure. Even a lump sum payment is not decisive as regards the nature of the payment. The true test for qualification of expenditure under section 37 is that it should be incurred wholly and exclusively for the purpose of business and the expenditure should not be towards capital account. In the instant case, the admission fee paid towards corporate membership was an expenditure incurred wholly and exclusively for the purpose of business and not towards capital account as it only facilitated smooth and efficient running of the business enterprise and did not add to profit earning apparatus of the business enterprise. [Para 5.2] Therefore, the Tribunal's order was to be upheld and the revenue's appeal was to be dismissed.”

In view of above, we reverse the order of authorities below.

Hence, this ground of appeal raised by the assessee is allowed.”

7. For completeness, the Ld. AR also brought to my notice that the director of assessee company had no other option but to avail membership in individual capacity because assessee company was not eligible to get the corporate membership, since it (assessee company) did not had the necessary turnover as fixed by the managing committee of club as a threshold qualification/criteria (*viz Rs. 20 crores and above for the last three (3) years as certified by Statutory Auditor*). Hence the assessee company was not entitled for being admitted as a corporate member, and moreover the corporate membership was valid only for a limited period i.e. for 10 years; and the entrance fees for



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such a corporate membership per nominee was Rs.50 Lakhs plus 18% contribution towards contingency funds. And the annual subscription fees was Rs.30,000 plus tax; and change of nominee fees was Rs.50,000/- plus taxes. Thus, according to Ld AR, it can be seen that the assessee company was not eligible for corporate membership and if compared with the membership obtained by the director of assessee company it was cost effective as well as the present membership is for life, whereas corporate membership was for limited period i.e. ten (10) year only; and the recurring cost i.e. yearly subscription was also exorbitant in the case of corporate membership. Therefore, according to the Ld. AR, the assessee company when had an opportunity to avail the same facilities through its director Shri Anand Didwania took prudent decision to let him get the membership for the ultimate benefit of assessee company, since, its common knowledge that company is an artificial entity and function through its directors and share-holders. And according to assessee company, even though it has become an LLP from 9.4.2013, the assessee's director becoming partner in the LLP would be able to garner the benefits by becoming a member of the Cricket Club of India. Therefore, the expenses incurred to the tune of Rs.22,60,000/- was allowable expenditure in the light of the judicial precedents cited (supra).

8. Per contra, the Ld. DR vehemently opposing the action of the Ld. AR submitted that the assessee company at the fag of its life, had made the subscription for its director getting membership which is purely personal in nature. And therefore, could not have been allowed



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as an expenditure. Therefore, the relying on the Ld. CIT(A) action, the Ld. DR doesn't want us to interfere with the order of the Ld. CIT(A).

9. Having heard both the parties and after perusal of the records, it is noted that the assessee company was operational in the relevant financial year from 01.04.2013 to 08.04.2013; and so, 08.04.2013 was the last date of operation of the company. And thereafter, from 9.4.2013 onwards, it got converted into LLP. The only issue is regarding the expenditure claimed to the tune of Rs.22,60,000/- which has been paid by the assessee company to M/s. Cricket Club of India. The Ld. CIT(A) confirmed the action of AO by holding that the membership for assessee's director Shri Anand Didwania in a club in the facts of the case was personal in nature and therefore, should not be allowed. However, it is noted that the assessee company could not have got the corporate membership because as noted (supra) it didn't qualify to be a corporate member. Therefore, the question of obtaining the corporate membership does not arise. In such a backdrop, when the assessee's director Shri. Anand Didwania got membership [*even though in the category of "Member's Son Category"*], it cannot be said that assessee/LLP won't get the benefit of the membership of director/partner. Since the expenditure incurred for club related activities are allowable as seen from the judicial-precedents noted supra, the disallowance of the claim made by assessee for sponsoring the membership by remitting the entrance fees of Rs. 22,60,000/- is allowable deduction because assessee's interest would be protected by the director/partner who would utilize his membership for the benefit of the company's/LLP's growth. The facilities of the Club would be



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utilized by the director/partner for meeting and interacting with other members of Cricked Club of India and thus would ultimately benefit the assessee (even though converted to LLP). The Kolkata Tribunal in the case of M/s. MKJ Tradex Ltd. (supra) has succinctly described the advantage of assessee company/its employees becoming members of a club which is not repeated again for the sake of brevity. Since the assessee company functions through the director/share-holders and even though converted to LLP, still will be functioning through the key persons; and it is noted that membership was for Shri. Anand Didwania, who was a director & later partner of LLP and so, is a key person of assessee company/LLP. So entrance fees paid by the assessee on behalf of Shri Anand Didwania to the tune of Rs. 22,60,000/- for becoming member of the Cricket Club of India would inure benefits for the business of the assessee/LLP. And therefore, in the light of the Hon'ble Supreme Court decision in the case of United Glass MFG Co. Ltd. (supra) it is held to be an allowable deduction in the facts and circumstances of this case. Therefore, AO is directed to delete addition of Rs.22,60,000/-.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 25/05/2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 25/05/2023.
Vijay Pal Singh, (Sr. PS)



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**