IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE

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

ITA Nos. 1019 & 1020/Bang/2023
Assessment Years : 2012-13 & 2020-21

M/s. United Breweries Ltd., Level 3, UB Tower, UB City, Bangalore North, Bangalore – 560 001. **PAN: AAACU6053C**	**Vs.**	The Deputy Commissioner of Income Tax, Circle 7(1)(1), Bangalore.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri K R Vasudevan & Shri Ankur Pai, Advocates
Revenue by	:	Shri D.K. Mishra, CIT DR

Date of Hearing	:	22-01-2024
Date of Pronouncement	:	31-01-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arises out of order passed by NFAC, Delhi for A.Ys. 2012-13 and 2020-21 vide orders dated 12.10.2023 & 13.10.2023 respectively.

2. It is submitted that common issue arises out of the two appeals and therefore both the appeals can be disposed of by way of a common order. The Ld.AR has summarised the issues that

commonly appear in both the appeals for the assessment years under consideration as under:

AY	Grounds	Issue
2012-13	1 to 5	Validity of reassessment proceedings
2020-21	-	-
2012-13	6 to 11	TV airing expenses and production expenses
2020-21	7 to 12	Digital media expenses and TV advertisements

3. The other grounds raised in AY 2020-21 are as under:

a) Ground nos. 2 to 6 – Depreciation on Goodwill
b) Ground nos. 13 to 18 – Addition in respect of sponsorship expenses
c) Ground nos. 20 to 22 – Expenditure on lease rentals

4. Brief facts of the case are as under:

4.1 Assessee is a limited company engaged in the business of manufacture and sale of beer under different brands like "kingfisher" and "UB". The assessee filed its return of income for A.Y. 2012-13 on 29.11.2012 which was subsequently revised on 07.02.2014. The case was selected for scrutiny and an order u/s. 143(3) r.w.s. 92CA was passed on 31.03.2016.

4.2 Aggrieved by the same, assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) passed its order on 20.11.2017 based on which an OGE was passed on 19.11.2018 by determining total

taxable income at Rs.3,15,60,13,2017/-. Subsequently the case was reopened u/s. 147 of the act and statutory notices u/s. 148 was issued. Assessee followed the due procedure of law to obtain the reasons recorded. The same were rejected by passing a speaking order on 23.04.2019. The reassessment was subsequently completed on 22.05.2019 by disallowing expenses of Rs.27,07,39,409/- in the hands of the assessee.

4.3 Aggrieved by the order of the Ld.AO, assessee preferred appeal before this *Tribunal.*

5. The Ld.CIT(A) upheld the disallowance by following the order passed for A.Y. 2016-17.

6. Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal* for A.Y. 2012-13.

6.1 At the outset, the Ld.AR has submitted that the legal issue raised in ground nos. 1 to 5 challenging the validity of reassessment proceedings are not pressed.
Accordingly, ground nos. 1 to 5 stands dismissed.

7. In respect of **Ground nos. 6 to 11** pertaining to disallowance of payment made towards TV airing expenses, TV production expenses by holding that these expenses are in violation of law and public policy. At the outset, the Ld.AR submitted that this issue stands covered by the decision of *Coordinate Bench of this*

Tribunal in assessee's own case for A.Ys. 2015-16 to 2017-18, the details of which are as under:

a) Assessee's own case for A.Y. 2015-16 in IT(TP)A No. 2532/Bang/2019
b) Assessee's own case for A.Ys. 2016-17 & 2017-18 in IT(TP)A Nos. 345/Bang/2021 & 308/Bang/2023

The Ld.DR on the contrary relied on the orders passed by the authorities below.

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

8. We note that identical issue has been considered by this *Tribunal* in assessee's own case for succeeding assessment years. We refer to the order dated 29.08.2023 passed for A.Ys. 2016-17 and 2017-18 (supra) wherein this issue has been dealt with as under:

> *"13. Next ground Nos.62 to 66 in assessment year 2016-17 and ground Nos.29 to 35 in assessment year 2017-18 are with regard to digital media expenses made allegedly towards promotion of alcoholic products held as violation of law and public policy, which are reproduced as under:*
> ***(AY 2016-17):***
> ***Grounds related to expenses allegedly in violation of Law and Public***
> ***Policy - Digital media expenses***
> *31. The learned AO erred in disallowing the payments made towards advertisements aggregating to Rs.11,72,76,395 by erroneously holding that these expenses are in violation of law and public policy*
> *32. The learned AO erred in holding that these payments are in violation of the prohibition Act by wrongly surmising that these advertisement expenses solicit the use of intoxicant*
> *33. The learned AO erred in holding that the advertisement expenses are not allowable, whether it is product promotion or brand promotion, without appreciating the fact that the assessee does not do any specific product promotion and*

brand promotion expenses are in the revenue field and are allowable business expenditure.

34. The learned AO has erred in making the addition on the surmise that these expenses are in violation of the Prohibition Act, without showing as to how these payments are in violation of the Income Tax Act.

35. The learned AO has erred in not considering that the assessee does not do any "Above the line" advertisement of liquor products

(AY 2017-18):

Expenses made in violation of Law – Digital Media of Rs.17,95,97,760/-and TV advertisement expenses of Rs.34,35,36,727/-

29. The Ld CIT(A) erred in upholding the order of the Ld AO disallowing the payments of Rs.17,95,97,760/- made towards digital media advertisements and payments of Rs.34,35,36,727/- towards TV advertisement expenditure by erroneously holding that these expenses are in violation of law and public policy relying on the DRP directions of AY 2016-17.

30. The Ld CIT(A) and Ld AO erred in holding that the payments are made in violation of the Prohibition Act by wrongly surmising that these advertisement expenses solicit the use of intoxicant.

31. The Ld CIT(A) and Ld AO erred in holding that the advertisement expenses are not allowable, whether it is product promotion or brand promotion, without appreciating the fact that the Appellant does not do any specific product promotion and brand promotion, and the expenses are in the revenue field which are allowable business expenditure.

32. The Ld CIT(A) and Ld AO have erred in making the addition on the surmise that the expenses are in violation of the Prohibition Act, without showing as to how these payments are in violation of the Income-tax Act.

33. The Ld CIT(A) and Ld AO have erred in not considering that the Appellant does not do any "Above the line" advertisement of liquor products.

34. The Learned CIT(A) erred in not appreciating that in the decision cited by the Appellant, the Hon'ble Tribunal has given a finding on the substantive issue and applies squarely to the facts of the Appellant's case

35. The Learned CIT(A) erred in relying on a decision, whose facts are totally different and not applicable to the Appellant's case

13.1 Similar is the ground nos. 67 to 70 in assessment year 201617 and Concise ground nos.10 to 12 in assessment year 2017-18 with regard to expenses incurred on TV

Advertisement allegedly held as violation of law and public policy, which are reproduced as under:

AY (2016-17):

Grounds related to expenses allegedly in violation of Law and Public Policy - TV advertisements

36. The learned AO erred in disallowing the payments made towards advertisements aggregating to Rs. 30,61,08,223 by erroneously holding that these expenses are in violation of law and public policy

37. The learned AO erred in holding that these payments are in violation of law and public policy by wrongly surmising that it promotes alcoholic products and represents surrogate advertising

38. The learned AO erred in holding that the company cannot claim deduction on these expenses, as they are not relatable to business sales, contrary to facts

39. The learned AO has erred in making the addition merely on the surmise that these expenses are in violation of law and public policy, without showing as to how these payments are in violation of the Income Tax Act.

(Concise grounds in AY 2017-18):

Expenses made towards Digital Media and TV advt expenses:

10. The Ld CIT(A) erred in upholding the disallowance of payments made towards digital media advertisements and TV advertisements by erroneously holding that these expenses are in violation of law and public policy.

11. The Ld CIT(A) erred in holding that these expenses are not allowable, without appreciating that these expenses are revenue in nature and allowable expenses.

12. The Learned CIT(A) erred in not considering the decision of the Hon'ble Tribunal on the issue, by erroneously holding that there is no finding on the substantive issue and erred in relying on a decision, whose facts are different.

13.2 After hearing both the parties, we are of the opinion that similar issue came for consideration in assessment year 2015-16 in IT(TP)A No.2532/Bang/2019 cited (supra), wherein the Tribunal has held as under:

"49. We have heard the rival submissions and perused the materials available on record. The assessee has filed additional evidence as above. These additional evidences are produced first time before us and explained that assessee has been prevented by sufficient cause in not filing these additional evidences before the lower authorities. In our opinion, these additional evidences are very important to adjudicate this issue in dispute.

Accordingly, we admit these additional evidences for adjudication after admitting for adjudication. In our opinion, it is appropriate to remit the issue in dispute to the file of AO and AO has to see whether assessee has made any direct advertisement with regard to sale and marketing of liquor or assessee made any surrogate advertisement in this respect. If the assessee has made any surrogated advertisement or indirect advertisement not mentioning anything relating to the liquor, the claim of assessee is to be allowed. With these observations, we remit the issue in dispute to the file of AO for fresh consideration."

13.3 In view of the above order of the Tribunal, the issue in dispute is remitted to the file of AO for fresh consideration."

8.1 Respectfully following the aforestated view, we remit this issue back to the file of the Ld.AO for fresh consideration.

Accordingly, ground nos. 6 to 11 raised by assessee stands partly allowed for statistical purposes.

AY 2020-21:

9. Brief facts of the case are as under:

9.1 The assessee filed its return of income on 12.02.2021 declaring total income of Rs.712,44,45,350/-. The case was selected for scrutiny and the assessment was completed by making following disallowances.

a) Disallowance u/s. 14A – Rs.22,95,000/-
b) Disallowance of depreciation on goodwill – Rs.37,43,081/-
c) Expenses made in violation of law and public policy – Rs.110,17,99,953/-

9.2 Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

The Ld.CIT(A) upheld the disallowance made by the Ld.AO.

9.3 Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal.*

10. At the outset, it is noted that assessee has not challenged the disallowance made u/s. 14A as the authorities below restricted the same to the amount of exempt income earned during the year which is in parity with the ratios laid down by *Hon'ble Supreme Court* and various *High Courts* consistently followed by this *Tribunal.*

11. The Ld.AR submitted that **Ground nos. 7-12** is in respect of the disallowance made on the digital media expenses, TV advertisements expenses made which was against violation of law and public policy. It is submitted that this issue stands covered by the orders of this *Tribunal* in assessee's own case for A.Ys. 2015-16 to 2017-18 that has been followed for AY 2012-13 hereinabove.
The Ld.DR relied on the orders passed by the authorities below.

12. We have considered the submissions and note that the facts pertaining to the disallowance for the year under consideration are similar to the facts for disallowance made by the Ld.AO for A.Y. 2012-13 raised in ground nos. 6 to 11 that has been considered in paragraph 8 – 8.1 hereinabove. Applying the same *mutatis mutandis,* we direct the Ld.AO to consider the claim of the assessee afresh.

Accordingly, ground nos. 7 to 12 raised by assessee stands partly allowed for statistical purposes.

13. Ground nos. 2 to 6 raised by assessee is in respect of depreciation on goodwill.

13.1 The Ld.AR submitted that the assessee had claimed an amount of Rs.37,43,081/- as depreciation on 'goodwill' at the rate of 25% on the opening WDV of goodwill. The Assessee had acquired the brewery 'Karnataka Breweries and Distilleries Limited' through a process of demerger and acquisition at cost of Rs.180.52 crores during the AY 2007-08 and the fair market value of the buildings, land and other assets was at Rs.123.77 crores. The scheme of amalgamation was sanctioned by the Hon'ble High Court of Karnataka vide order dated 11.06.2007 with effect from 01.04.2006. The purchase consideration paid by the Assessee exceeding the fair value of tangible assets and other net current assets was treated as 'goodwill'. The assessee relied on the decision of the *Hon'ble Supreme Court* in case of *CIT v Smifs Securities Ltd.* reported in *348 ITR 302 (SC).*

The assessee submits that this *Tribunal* decided the issue against the assessee in the cases for AY 2007-08 to 2009-10 (supra) and the decision will apply to the present AY also. The Assessee submits that it has preferred appeal on the allowability of claim of depreciation before the *Hon'ble High Court of Karnataka* in *ITA No.61/2017* and the same is pending adjudication.

The Ld.DR supported the orders passed by the authorities below. He further submitted that this *Tribunal* decided the issue against

the order for A.Ys. 2007-08 to 2009-10 that will apply squarely to the facts of the present case.

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

13.2 We also note that this issue has been considered by this *Tribunal* for A.Ys. 2015-16 to 2017-18. On perusal of the above orders, it is noted that this *Tribunal* while considering identical issue for A.Y. 2013-14 in ITA No. 2569/Bang/2017 dated 01.06.2022 has been dismissed. In the present facts of the case, we note that Ld.AO has distinguished the facts of *Hon'ble Supreme Court* in case of *Smifs Securities Ltd. (supra)* that the facts in the present and as relied on the detailed analysis / reasoning provided in the assessment order for A.Y. 2007-08. Considering the above, we do not find any merit in the claim raised by the assessee and the same is dismissed.

Accordingly, ground nos. 2 to 6 raised by the assessee stands dismissed.

14. Ground nos. 13-18 are raised in respect of disallowance of sponsorship expenses.

14.1 The Ld.AO disallowed sponsorship expenses aggregating to Rs.27,24,18,641/- by erroneously holding that the sponsorship expenses on IPL and football teams ultimately promote alcoholic products and are in violation of law and public policy. It is submitted that the Ld.AO disallowed the expense based on surmises and without showing how these payments are in violation of the Income Tax Act, the details provided are as under:

Head of expense	Amount (Rs.)
Indian Premiere League ("IPL")	
- Delhi Dare Devils	29,50,000
- Sunrisers Hyderabad	2,25,13,456
- Royal Challengers Bangalore	4,86,16,000
- Kings XI Punjab	1,84,08,000
- Rajasthan Royals	2,00,60,000
- Mumbai Indians	4,22,38,690
Other Local / National Events	11,76,32,495
Total	**27,24,18,641**

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

After considering the submissions of the assessee, the Ld.CIT(A) held that the sponsorship expense incurred by the assessee was for promotion of 'Kingfisher' generic brand which created benefit of enduring nature to all group companies. The CIT(A) therefore treated the' same as 'capital expenditure'.

14.2 Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal.*

The Ld.AR submitted as under:

> *i) "It is an admitted fact that these expenses were incurred for promoting an event.*
> *ii) The AO has wrongly surmised that the Digital media expenses incurred are in violation of Excise laws, when the Excise department has not said so and has not initiated any action. The submissions of the Appellant in relation to Ground Nos.7-12 (supra) are also equally applicable to the disallowance of sponsorship expenses made by the AO.*
> *iii) The CIT(A) has held that this expense is towards brand promotion and hence capital in nature.*
> *iv) The Appellant submits that the Hon'ble Tribunal in the case of United Spirits Limited [IT(TP)A No. 2701/8/2017, AY 2013-14] has allowed similar payments made for sponsorship events as allowable expenses.*

v) The Appellant submits that similar issue had come up before this Hon'ble Tribunal in Appellant's case for AY 2012-13 [IT(TP)A No.481/8ang/2018] wherein the disallowance of brand promotion fees paid to Force India Formula One Team was made by the AO under section 37 of the Act. The Hon'ble Tribunal has allowed the deduction in respect of brand promotion expenses.
vi) The Appellant also submits that the Hon'ble Tribunal in Appellant's case for AY 2015-16 [IT(TP)A No.2532/Bang/2019] has allowed business promotion expenses incurred by the Appellant.
vii) The Appellant further submits that similar issue for AY 2016-17 came up before the Hon'ble Tribunal for the AY 2016-17 [IT(TP)A No.345/Bang2021]. The Hon'ble Tribunal has remanded the issue to Ld AO for fresh consideration with a direction to allow the expense after examining genuineness in light of the decision of ITAT in Appellant's case for AY 2015-16 in IT(TP)A No. 2532/8/19.
viii) The Appellant: submits that the sponsorship expenses are genuine business expenditure and revenue in nature, the same deserves to be allowed. Accordingly, the addition of Rs. 27,24,18,641/- made by the Ld AO deserves to be deleted.
ix) Without prejudice to the above, the Appellant submits that the CIT(A) has not allowed depreciation on the amount of sponsorship expenses capitalized."

The Ld.DR on the contrary relied on the orders passed by the authorities below

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

14.3 We note that this issue has been remanded to the Ld.AO for fresh consideration for A.Y. 2013-14 that was followed in subsequent years by observing as under:

"14.1 After hearing both the parties, we are of the opinion that similar issue came for consideration before this Tribunal in assessee's own case in IT(TP)A No.2532/Bang/2019 cited (supra), wherein the Tribunal has held as under:

"36. We have heard the rival submissions and perused the materials available on record. Similar issue came for consideration before this Tribunal in

assessee's own case in ITA No.481/Bang/2018 dated 11.11.2022 wherein held as under:

"11.5 We have heard rival submissions and perused the material on record. Similar issue has been considered by the Tribunal in the case of United Spirits Limited for the AY 2013-2014 in IT(TP)A No. 2701/Bang/2017 (order dated 05.04.2022) wherein it was held as under:-

> *"12.6 We have heard rival submissions and perused the material on record. The AO disallowed the sales promotion and advertisement expenses totally amounting to Rs. 44,33,55,403 [36,91,12,995 + 7,42,42,408] for the reason that these expenses are brand promotion expenditures of USL logo, it promotes the brand the assessee, gives enduring benefit and hence capital in nature. The DRP confirmed the action of the AO.*
>
> *12.6.1 Similar issue has been considered by the Tribunal in assessee's own case for the AY 2012-13 in IT(TP)A No. 489/B/2017 order dated 29.5.2020 wherein it was held as under:-*

"45. We have heard Ld D.R on this issue and perused the record. We notice the issue relating to allowability of expenditure incurred on sponsorship of sports event was considered by the Mumbai bench of ITAT in the case of Samudra Developers Pvt Ltd (ITA 5974/Mum/2013 dated 2604-2017) and it was held that the same is allowable as revenue expenditure. For the sake of convenience, we extract below the operative portion of the order passed by Mumbai bench of Tribunal on an identical issue:-

"3. Second ground of appeal pertains to deleting the disallowance on account of sponsorship fees and management fees. In the earlier part of our order, we have mentioned the facts about the various disallowances made by the AO including the capitalisation of sponsorship. Treating it as an intangible asset, he allowed depreciation on it @25%.

3.1. The FAA after considering the elaborate submissions of the assessee, held that it had entered into an agreement with the sports company namely India-Win in the month of March, 2010, that the assessee-group became cosponsor of Mumbai Indian IPL cricket team as an associate partner, that as per the agreement the ground logo of the assessee group was displayed permanently in the cricket stadium is also on the playing gear of the players, that in the terms of the agreement and amount of Rs.4.50 crores was paid towards sponsorship fees during the year under consideration, that the sponsorship fees for different years had been apportioned and allocated to 3 entities of the assessee group which were using the brand logo in the ratio of their respective turnovers during the year, that out of the expenditure of Rs. 2.50 crores and amount of Rs.

21.61 lakhs was allocated to the assessee, that the expenditure incurred on IPL sponsorship did not provide it any benefit of enduring nature, that the expenditure had been incurred year after year by the assessee group with a view to get visibility, that it was in nature of some kind of advertisement expenditure, that same should be allowed as revenue expenditure. Referring to the case of Delhi Cloth and General Mills Co.Ltd.(115 ITR 659) of the honorable Delhi High Court, the FAA allowed the appeal filed by the assessee.

3.1.a. With regard to management fee, the FAA observed that there was no doubt about the genuineness of expenditure, that the expenditure was incurred for availing infrastructure facilities administrative support, like manpower recruitment, HR services, uses of computer, telephone, photo copiers, infrastructure set up etc. in order to carryout business operations smoothly, that the parent company had allocated a certain amount to the account of the assessee in the ratio of its turnover. He finally held that expenditure had to be allowed as revenue expenditure.

3.2. Before us, the DR supported the order of the AO and the AR relied upon the order of the FAA. We find that the assessee group had entered into an agreement with India Win, that it was a co- sponsor of Mumbai Indian IPL team, that it had incurred similar expenditure in the

subsequent two years, that out of the total expenditure the assessee had claimed a very small proportion under the head sponsorship expenses. Such an expenditure is for advertising the brand name of the Group. Being a recurring expenditure, it had to be allowed as revenue expenditure. We find that in the case of Delhi Cloth and General Mills Co.Ltd.(supra)the Hon'ble Court had held that expenditure incurred for organizing sports events are allowable items of revenue expenditure as such events publicise the names of the sponsor. The AO was not justified in capitalising the expenses. The entire expenditure was rightly allowed by the FAA as revenue expenditure. After going through the details of expenditure incurred by assessee under the head managerial expenses, we are of the opinion that it had not got any enduring benefit from the expenditure incurred nor did the expenditure create any capital asset. Therefore, we do not want to interfere with the order of the FAA. Considering the above, we decide second ground of appeal against the AO."

46. The Delhi bench of Tribunal has also examined an identical claim in the case of M/s Pepsico India Holdings Pvt Ltd (supra) and the same was allowed as revenue expenditure with the following observations:-

"Re: Disallowance of INR 3,85,15,497/- being sponsorship fees paid to ICC

87. In Grounds No. 7 to 7.3 in I.T.A. No. 1044/DEL/2014 for AY 200910, the assessee has challenged the disallowance of INR 3,85,15,497/-being sponsorship fees paid by the assessee to ICC. Our attention was drawn to paras 4 to 4.3 of the final assessment order wherein the said issue has been discussed by the AO. It has been submitted that during the relevant previous year the assessee entered into an agreement dated 20.08.2008 with ICC Development (International) Limited (ICC) for obtaining sponsorship rights in respect of various ICC cricketing events around the world. The assessee paid an amount of Rs. 3,85,15,497/- for sponsoring cricketing events held during 2008 to ICC. The said amount was proposed to be disallowed by the AO in the Draft Assessment Order, for the following reasons: -

(i) Similar expense has been disallowed in the earlier years as part of the Transfer Pricing Adjustment on account of AMP expenses.

(ii) Assessee has been bearing substantial portion of the fees paid to ICC for acquiring sponsorship rights even though benefit of the same is derived by the other entities of the world.

88. Aggrieved by the addition proposed by the AO, the assessee had filed objections before the DRP. The DRP vide directions dated 20.12.2013 upheld the action of the AO, on the ground, that the expenditure was benefitting all the entities across the globe and hence, it could not be said to have been incurred wholly and exclusively for the business of the assessee.

89. The learned counsel for the assessee submitted that the said disallowance was unwarranted since the said expense was incurred in view of the fact that major viewership of cricket is in the Indian subcontinent. He also referred to various newspapers reports which demonstrated the popularity of the sport in India to support the aforesaid contentions. It was also submitted that the assessee company has consistently promoted its range of products using cricket as an advertising platform. It was also to our notice that payment of sponsorship fees to ICC was remitted by the assessee after deduction of tax at source as instructed by the Income Tax Department. Further, the assessee had obtained the approval of the Ministry of Youth Affairs and Sports for sponsoring the events covered under the agreement. Copy of the order under section 195 of the Act and the approval received from the Ministry of Youth Affairs and Sports has been enclosed at pages 247 to 249 and 224 of the paper-book respectively. He further submitted that the expenditure was wholly and exclusively for the business of the assessee company and had not been disputed by the revenue. Any incidental benefit that may arise to any other person or entity cannot be a bar for allowance of expenditure under section 37 of the Act, as per the settled position of law. Reference in this regard was made to the decisions of the Hon'ble Supreme Court of India in CIT vs. Chandulal Keshavlal & Co. [1960] 38 ITR 601 (SC), Sasson J. David and Co. P. Ltd vs. CIT 118 ITR 261(SC) and

SA Builders Ltd. vs. CIT 288 ITR 1(SC). He further submitted that the Revenue cannot step into the shoes of an assessee to determine the commercial expediency of an expenditure incurred by it.

28. On the other hand, the learned DR relied upon the order of the AO and the DRP in support of his contentions.

29. After considering the rival submissions and on perusal of the impugned orders, we find that, here the disallowance of Rs.3,85,15,497/- has been made on account of sponsorship fee by the assessee to the ICC on the ground that similar expenditure was disallowed in the earlier years as part of Transfer Pricing Adjustment on account of AMP expenses; and secondly, assessee has been bearing substantial portion of the fees to the ICC for acquiring the sponsorship rights even though benefit of the same is derived by either entity of the world. The contention raised by the learned counsel that since major viewer of cricket is an Indian subcontinent looking to its mass popularity in India, the assessee company has been consistently promoting its range of products using cricket as an advertisement platform. The said payment has been made after obtaining the approval of Ministry of Health Affairs and Sports and after deducting TDS u/s.195. Once the expenditure has been incurred wholly and exclusively for the purpose of business which fact has not been disputed by the Department, then even if some incidental benefit which may arise to any other entity cannot be a bar for allowance of

30. expenditure u/s. 37. Under the principle of commercial expediency such an expenditure has to be seen from the angle, whether the decision taken by the assessee for paying sponsorship fees was for the purpose of business or not. Here in this case, the commercial expediency has not been doubted but rather it has been held by the AO that in all the years transfer pricing adjustments has been made on this score and benefit is arising to the other AEs also. What is relevant for an expense to be allowable as revenue expense is that, whether it has been incurred during the course of business and is for the purpose of business. Benefit factor to other related parties is relevant under transfer pricing provision and not while allowability of business expense u/s 37(1). It is well known fact that companies use sports event as a platform to advertise their range of products as it has a very high viewership. Any such incurring of expenditure is ostensibly for promotion of business only and hence, no disallowance is called for.

31. Accordingly, Grounds No.7 to 7.3 in ITA No.1044/Del/2014 pertaining to A.Y. 2009-10 are allowed."

32. 47. We notice that the co-ordinate benches are consistently holding the view that the expenditure incurred on sponsoring of sports events are intended to promote business only and hence the same is allowable as expenditure. The allowability of brand promotion expenses was examined by Hon'ble Delhi High Court in the case of Modi Revelon P Ltd (supra) and the relevant discussions made by the High Court are extracted below:-

33. "22. As far as the second aspect, i.e. expenditure for promotion of the brand is concerned, there is no doubt that the dealer's functions extend to advertising the products of the assessee, manufactured by the sister concern. On this aspect, Section 37 of the Income-tax Act would be relevant. The said provision reads as follows:

34. "SECTION 37 GENERAL:

35. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

36. Explanation : For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

37. (2B) Notwithstanding anything contained in sub-section (1), no allowance shall be made in respect of expenditure incurred by an

38. assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.

39. The applicable test as to what constitutes expenses "laid out or expended wholly and exclusively for the purposes of the business or profession" was explained in Gordon Woodroffe Leather Manufacturing Co. v. CIT [1962] Supp. (2) SCR 211. The correct approach, said the Court, which has to be taken in all such cases is to see whether:

40. "was the sum of money expended on the ground of commercial expediency and in order indirectly to facilitate the carrying on of the business"

41. Again, in Sassoon J. David & Co. (P.) Ltd. v. CIT [1979] 118 ITR 261! 1 Taxman 485 (SC) the Supreme Court outlined the correct test of commercial expediency as the guiding principle to decide whether the expenditure was to facilitate profits, as follows:

42. (iii) that the sum of money was expended on the ground of commercial expediency and in order indirectly to facilitate the carrying on of the business of the assessee"

43. In Smith Kline & French (India) Ltd. v. CIT [1992] 193 ITR 582![1991] 59 Taxman 357 (Kar.), it was held that in normal commercial sense and in common parlance sales promotion and publicity are activities aimed at gaining goodwill in the market. They need not be confined to media propaganda but can involve indirect approaches. The judgment of a Division Bench of this Court in CIT v. Adidas India Marketing (P.) Ltd. [2010] 195 Taxman 256

(Delhi) has recognized that brand promotion exercises undertaken through media campaigns, schemes, programmes etc are essential for propagation of the brand. The necessity (or lack of it) is not something which income tax authorities can go into; as long as it is voluntarily undertaken by the business enterprise for profit earning, it would be entitled to claim relief under section 37(1).

44. 23. In the present case, the AO was conscious of the fact that brand promotion expenses are a necessary ingredient in marketing strategies. Therefore, he allowed about 50 per cent of those expenses. However, the reasoning for disallowance of the rest, i.e. that the assessee could claim only a proportion of such expenses, since advertising expenses were to be borne by the sister concern dealer, and that the proportion was in respect of its territory, was not upheld. This Court does not see any fallacy in the Tribunal's approach or reasoning, on this aspect. One is not unmindful of the concerns of a business which engages in sale of consumer items, and faces continuous competition. Brand promotion enhances the visibility of given products or services, and are often perceived as conferring a competitive advantage on those who adopt those strategies or schemes. Expenditure towards that end is based on pure commercial expediency, which the revenue in this case, ought to have recognised, and allowed. The revenue's arguments on this point too are insubstantial."

48. The observations made by the Hon'ble jurisdictional Karnataka High Court in the case of CIT vs. ITC Hotels (2014)(47 taxmann.com 215) on the concept of "enduring benefit" is relevant here and the same is extracted below:-

"6. The first substantial question of law relates to a sum of Rs.10 lakhs, which were paid by the assessee as a license fee for the use of central court yard, having marble, (for short "Court Yard") in Lallgarh Palace (for short 'Palace'). It appears that there was a Memorandum of Understanding (for short 'MOU') between the Assessee and Maharaja Ganga Sinhji Charitable Trust (for short the "trust"). The assessee, as per the MOU, had acquired a right to use the court yard for their business of hotel, being run in the palace, more efficiently and profitably. The question is whether the expenditure of Rs.10 lakh resulted in any addition to the fixed capital of the assessee. According to the Revenue, the assessee had acquired right to use the court yard apart from the palace, and thus, had acquired an advantage of enduring benefit of a trade. In other words, the expenditure incurred by the assessee for the use of court yard is in the capital field and it cannot be said to have been incurred to facilitate trading operation of the assessee.

7. Learned Counsel appearing for both the sides placed reliance upon the judgment of the Supreme Court in the case of Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1/3 Taxman 69, in support of their contentions. Mr. Aravind, learned counsel for the Revenue tried to

distinguish the ratio laid down by the Supreme Court in this case on the basis of factual matrix involved therein. As against this, learned counsel appearing for the respondent/assessee placed reliance upon the principle laid down by the Supreme Court in the said judgment.

8. We have perused the judgment. We find ourselves in agreement with the learned counsel appearing for the respondent/assessee. It would be relevant to reproduce the relevant observation made by the Supreme Court, in the said judgment, which, in our opinion, support the case of the respondent/assessee to contend that the expenditure of Rs. 10 lakhs would be on revenue account. The relevant observation in the case of Empire Jute Co. Ltd. (supra) reads thus:

9. 'The decided cases have, from time to time, evolved various tests for distinguishing between capital and revenue expenditure but no test is paramount or conclusive. There is no all embracing formula which can provide a ready solution to the problem; no touchstone has been devised. Every case has to be decided on its own facts, keeping in mind the broad picture of the whole operation in respect of which the expenditure has been incurred. But a few tests formulated by the Courts may be referred to as they might help to arrive at a correct decision of the controversy between the parties.

10. One celebrated test is that laid down by Lord Cave L.C. in Atherton Vs. British Insulated & Helsby Cables Ltd. (1925) 10 Tax Cases 155 (HL), where the learned Law Lord stated :

11. "...when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite condition) for treating such an expenditure as properly attributable not to revenue but to capital".

12. This test, as the parenthetical clause shows, must yield where there are special circumstances leading to a contrary conclusion and, as pointed out by Lord Radcliffe in CIT v. Nchanga Consolidated Copper Mines Ltd. [1965] 58 ITR 241 (PC) : TC16R.991, it would be misleading to suppose that in all cases, securing a benefit for the business would be, prima facie, capital expenditure "so long as the benefit is not so transitory as to have no endurance at all. There may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the

advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case'.

9. It is clear that if the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. In the present case, except the right to use the court yard, no other rights were created in favour of assessee. In other words, the amount paid to the Trust was for the use of the court yard

under the MOU for an indefinite future, and therefore, it would be on revenue account. In other words merely because the advantage may endure for an indefinite future would not mean that the expenditure would be on capital account and not revenue. The advance of Rs. 10,00,000/-, in the present case, consists merely in facilitating the assessee's business operations, enabling the management to conduct their Hotel business more efficiently and profitably. We are, therefore, satisfied that the view taken by the Tribunal in answering this question in favour of Assessee and against the Revenue is correct and deserve no interference by this Court."

49. Respectfully following the above cited decisions, we set aside the order passed by AO on this issue and direct him to allow the impugned sponsorship expenses as revenue expenditure."

12.6.2 Following the above order the ITAT in assessee's own case for assessment year 2012-2013 (supra), we allow deduction of sales promotion and advertisement expenses of Rs. 44,33,55,403. As the entire expenses are allowed as revenue expenditure, the question of depreciation does not arise."

11.6 Following the above order of the Tribunal in the case of United Spirits Limited (supra), we allow deduction in respect of brand promotion expenses. It is ordered accordingly."

36.1 In view of the above order of the Tribunal, we direct the AO to allow the deduction towards business promotion expenses incurred by the assessee. These grounds of assessee are allowed."

14.2 In view of this, we direct the AO to allow deduction towards business promotion expenses incurred by the assessee after examining the genuineness of the expenditure and decide the issue afresh in the light of above order of the Tribunal. Ordered accordingly.

15. The assessee has also raised grounds connected to the above expenditure with regard to disallowance on the basis of sponsorship expenses on protective basis.

15.1 After hearing both the parties, we are of the opinion that similar issue came for consideration in assessee's own case in IT(TP)A No.2532/Bang/2019 cited (supra), wherein the Tribunal has held as under:

"17. After hearing both the parties, we are of the opinion that this is a protective addition which require to be remanded back since the ALP adjustment of sale promotion has gone back to the AO. The AO has to examine the issue as decided by this Tribunal in assessment year 2013-14 in IT(TP)A No.2569/Bang/2022 for the AY 2013-14 vide order dated 1.6.2022 in para 33 of that order as reproduced earlier. Accordingly, these grounds of assessee's appeal are partly allowed for statistical purposes."

15.2 In view of the above order of the Tribunal, this issue is remitted to the file of AO on similar directions."

Respectfully following the above view, we remit the issue back to the Ld.AO for fresh consideration on similar directions.

Accordingly, Ground nos. 13 to 18 raised by assessee stands partly allowed for statistical purposes.

15. Ground nos. 20-22 are raised by assessee on disallowance of expenditure on lease rentals.

15.1 The Assessee submits that FY 2019-20 (AY 2020-21) was the first year of introduction of Ind AS 116 - 'Leases' according to which certain lease expenses were recorded as assets in the Assessee's audited financial statements. However, for tax purposes, since these were only lease expenses and not assets of the Assessee, the same were not recorded as part of tax block of assets.

It is submitted that the assessee was entitled to claim lease rentals of the year as expenditure and any related depreciation and notional interest expense was required to be disallowed. The Assessee was entitled to a deduction of lease rental expenses for the year amounting to Rs.9,02,99,955/- and related notional interest charged to the statement of profit and loss in relation to lease expenses amounting to Rs.1,42,15,612/- was required to be disallowed.

While preferring an appeal before the Ld.CIT(A), assessee raised this issue by way of additional ground.

The Ld.CIT(A) did not admit the ground. The Ld.CIT(A) did not admit the additional ground of appeal raised by the Appellant rejected the claim made by the assessee. The Ld.CIT(A) relied on the' decision of the *Hon'ble Supreme Court* in *Goetze (India) Limited* reported in *(2006) 157 Taxman 1 (SC)* and held that the assessee could only make an additional claim by filing' a revised return of income.

15.2 Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal.*

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

15.3 In the interest of justice, we remit this issue to the Ld.AO for fresh consideration and to consider the claim in accordance with law. Assessee is directed to furnish all the details pertaining to the lease rentals expenditure incurred, the agreements with the parties to whom lease rentals have been paid, the details of

the parties etc. Needless to say that proper opportunity of being heard must be granted to the assessee.

Accordingly, ground nos. 20-22 raised by assessee stands partly allowed for statistical purposes.

In the result, both the appeals filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 31st January, 2024.

Sd/-	**Sd/-**
(CHANDRA POOJARI)	(BEENA PILLAI)
Accountant Member	Judicial Member

Bangalore,
Dated, the 31st January, 2024.
/MS /

Copy to:

1. Appellant	2. Respondent
3. CIT	4. DR, ITAT, Bangalore
5. Guard file	6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore