

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1243/MUM/2023
(Assessment Year: 2017-18)**

Diversey India Hygiene Private Limited,

501, 5th Floor, Ackruti Centre Point,
MIDC Central Road, Andheri (East),
Mumbai - 400093

[PAN: AABCC1597Q]

..... **Appellant**

**Commissioner of Income Tax
(Appeals), National Faceless Appeal
Centre (NFAC), Delhi**

Vs

..... **Respondent**

**ITA No. 1283/MUM/2023
(Assessment Year: 2017-18)**

Deputy Commissioner of Income Tax

1(3)(1), Mumbai,

Room No. 535, 5th Floor, Aayakar Bhavan,
M.K. Road, Mumbai - 400020

..... **Appellant**

Diversey India Hygiene Private Limited,

5th Floor, Ackruti Centre Point,
MIDC Central Road, Andheri (East),
Mumbai - 400093

[PAN: AABCC1597Q]

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Ajit Jain
Shri Siddesh Chaugule

For the Respondent/Department : Smt. Sanyogita Nagpal

Date

Conclusion of hearing : 12.12.2023

Pronouncement of order : 29.02.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These cross-appeals pertaining to Assessment Year 2017-18 arise from the order, dated 14/02/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] whereby the Ld. CIT(A) had partly allowed appeal of the Assessee against the Assessment Order, dated 07/06/2021, passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Assessee has raised following grounds of appeal in ITA No. 1243/Mum/2023:

"On the facts, and in the circumstances of the case, and in law, the Appellant craves to prefer an appeal against order dated 14 February 2023 passed by the Commissioner of Income- tax (Appeals), (hereinafter referred to as the 'learned CIT(A)'), under Section 250 of the Income- tax Act, 1961 ('the Act'), in respect of order dated 7 June 2021 passed by the Assessing officer ('the learned AO") under Section 143(3) of the Act on the grounds as set out herein:

The following grounds are independent of, and without prejudice to, one another:

1. Addition for duty drawback

On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the addition of Rs.1,50,808 in respect of duty drawback from CBEC, without appreciating the fact that Appellant has offered correct amount of duty drawback as received by it under the miscellaneous income.

The Appellant prays that the AO be directed to delete the addition made in respect of duty drawback of Rs.1,50,808.

2. Disallowance of deduction under Section 80G

On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming disallowance of Rs. 16,90,333 under section 80G of the Act, without appreciating the fact that the entire donation claim has been verified, certified and disclosed in the tax audit report and Appellant has submitted the proof of all donation receipts including bank statement for the balance to substantiate its claim.

The Appellant prays that the AO be directed delete addition and allow deduction for donation under section 80G of the Act of Rs. 16,90,333.

3. Refund of excess taxes paid on dividend distributed

- 4.1 On the facts and circumstances of the case and in law, the Hon'ble CIT(A)m has erred in not admitting the additional Ground nos. 13 and 14 filed by Appellant during the course of Commissioner (appeal) proceedings on the contention that it was not raised during the assessment proceedings.*
- 4.2 On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in not allowing the Appellant's claim made vide additional ground no. 13 and 14 on merits for taxation of dividend, paid by the Appellant to its non-resident shareholders resident of USA viz. Diversey Inc. and Cryovac International Holdings Inc., to be restricted at 15% under the Article 10 of the India USA Tax Treaty as against the rate applicable as per Section 115-0 of the Act and thereby refund of the excess tax paid.*
- 4.3 The CIT(A) failed to appreciate that the issues raised in additional Ground nos. 13 and 14 goes to the root of the matter and are based on development of the jurisprudence and ought to have been admitted and adjudicated on merits and further failed to inter alia appreciate that dividend distribution tax being tax on dividend income should be restricted to rate as per India-USA Tax Treaty.*
- 4.4 The Appellant prays that the taxation of the dividend paid by the Appellant to the shareholders resident of USA be restricted to 15% under India-USA Tax Treaty and the refund of excess tax (DDT) paid by the Appellant thereon be granted.*

4. Interest under Section 234C of the Act

On the facts and circumstances of the case and in law, the Hon'ble CIT (A) has erred in not holding that the interest as per Section 234C of the Act applies only on shortfall in advance tax based on the returned income and not on the assessed income."

3. The Revenue has raised following grounds of appeal in ITA No. 1283/Mum/2023:

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s 80IC made by AO of Rs. 25,07,79,549/- relying on the wrong and misleading facts presented by the assessee that deduction availed on the basis of manufacturing unit at Baddi Unit at Himachal Pradesh, without appreciating the fact that AO disallowed the same for the state of Himachal Pradesh in compliance with Thirteenth Schedule of the Income Tax Act, 1961.*

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting disallowance of club membership fees of Rs. 1,09,164/- as expenses of personal nature without appreciating the fact that in the assessment proceedings the same was disallowed by the AO u/s 37(1). At the time of Assessment proceedings the AO finds that the same expenses were debited to Profit and loss account. Therefore, the AO had made addition of Rs. 109,164/- as disallowed expenses u/s 37(1)."*

4. The relevant facts in brief are that the Assessee is a company engaged in the manufacture, marketing and trading of institutional and industrial cleaning and hygiene products. The Assessee filed return of income for the Assessment Year 2017-18 on 29/11/2017 declaring total income of INR 1,15,71,62,610/-. Subsequently, the case of the Assessee was selected for complete scrutiny. The regular scrutiny assessment under Section 143(3) read with Section 144B of the Act was completed vide assessment order, dated

07/06/2021, at assessed income of INR 1,40,92,38,870/- after, inter alia, making the following additions/disallowances:

- a) Disallowance of Club Membership Fee of INR 1,91,569/-
- b) Additions of INR 1,50,828/- in relation to Duty Drawback
- c) Disallowance of deduction of INR 25,20,76,257/- claimed under Section 80IC of the Act
- d) Disallowance of deduction of INR 8,45,167/- claimed under Section 80G of the Act

5. Being aggrieved, the Assessee preferred appeal before CIT(A) against the above addition/disallowance made by the Assessing Officer. The CIT(A), vide order, dated 14/03/2023, disposed off the appeal preferred by the Assessee as partly allowed. The CIT(A) overturned the order of the Assessing Officer and deleted the disallowance of INR 25,20,76,257/- made under Section 80IC of the Act, as well as the disallowance of INR 1,07,169/- made under Section 37(1) of the Act in respect of Club Membership Fee. However, the disallowance of deduction of INR 8,45,167/- claimed under Section 80G of the Act as well as the additions of INR 1,50,828/- in relation to Duty Drawback were confirmed by the CIT(A).
6. Vide letter, dated 13/01/2023, the Assessee has also raised an additional ground before CIT(A) seeking refund of Dividend Distribution Tax (DDT) paid at the rate of 20.36% as per the provisions of Section 115O of the Act to the extent the same exceeded the beneficial rate of taxation of dividend specified in the Double Taxation Avoidance Agreement between India and USA, being the country of tax residence of the dividend recipients. The

CIT(A) observed that the Assessee had failed to provide any satisfactory explanation for not raising the additional ground during the assessment proceedings. Thereafter, the CIT(A) proceeded to decide the additional ground raised against the Assessee on merits. Making reference to the decision of the Mumbai Bench of the Tribunal in the case of DCIT Vs. Total Oil Private Limited reported in [2021] 127 taxmann.com 774 (Mumbai Tribunal), the CIT(A) rejected the additional ground raised by the Assessee on merits.

7. Now, both, the Assessee as well as the Revenue are in appeal before us on the grounds reproduced in paragraph 2 and 3 above.

Appeal by Assessee : ITA No. 1243/MUM/2023

8. We would first take up grounds raised by the Assessee in its appeal.

Ground No. 1

9. Ground No. 1 raised by the Assessee is directed against the order of the CIT(A) confirming addition of INR 1,50,828/- in relation to Duty Drawback. In view of the statement made by the Learned Authorised Representative of the Assessee under instructions, Ground No. 1 is dismissed as not pressed.

Ground No. 2

10. Ground No. 2 raised by the Assessee is related to rejection of claim of deduction under Section 80G of the Act.
11. During the assessment proceedings, the Assessing Officer noticed that the Assessee had claimed deduction (at the rate of 50%) under Section 80G of the Act in respect of payment of INR 28,49,175/- and INR 4,87,124/- made by the Assessee to 'Doctor

for You' and 'United Way of Mumbai'. In response to query/notice from the Assessing Officer, the Assessee was able to furnish donations receipts of INR 51,58,816/-. Therefore, deduction claimed by the Assessee under Section 80G of the Act in respect of balance donations of INR 16,90,333/- was not allowed by the Assessing Officer and therefore, disallowance of INR 8,45,167/- [being 50% of INR 16,90,333/-] was made by the Assessing Officer.

12. In appeal before CIT(A), the Assessee furnished proof of donations of balance amount of INR 16,90,333/- consisting of donation of INR 12,03,209/- made to 'Doctor for you' and donation of INR 4,87,124/- made to 'United way of Mumbai'. However, the CIT(A) decline to take the same into consideration holding that the same was in the nature of additional evidence and the Assessee had not furnished any application for admission of additional evidence. The CIT(A) also observed that the proof furnished by the Assessee were not verifiable.
13. Being aggrieved, the Assessee carried the issue in appeal before the Tribunal.
14. It was contended on behalf of the Assessee that the donations made by the Assessee and claimed as deduction under Section 80G of the Act were genuine and the same could be verified from the supporting documents (including bank statement of the Assessee, and tax audit report). The donation receipts for INR 16,90,033/- could not be submitted during the assessment proceedings as the same were not readily available. However, before the CIT(A), the donation receipts and bank statement for INR 16,90,333/- were

produced. However, the CIT(A) declined to consider the same on a technical ground. It was submitted that the claim of deduction under Section 80G of the Act were verified by the tax auditor. Copy of entire donation receipts and relevant extract of the bank statement were furnished by the Assessee. Therefore, the disallowance of INR 8,45,167/- under Section 80G of the Act sustained by the CIT(A) should be deleted.

15. Per contra, the Ld. Departmental Representative placed reliance upon by the order passed by the CIT(A) on this issue and submitted that the Assessee had failed to support the claim of deduction under Section 80G of the Act with cogent and verifiable supporting evidence before the Assessing Officer and/or the Assessing Officer. Further, the CIT(A) was correct not considering the additional evidence as absent any application for admission of additional evidence the same could not have been considered.
16. We have heard the rival contention and perused the material on record. It is admitted position that the Assessee had filed additional evidence before CIT(A) in support of deduction of INR 8,45,167/- claimed under Section 80G of the Act. In our view, the CIT(A) was not justified in rejecting the additional evidence on a technical ground without confronting the Assessee. Further, we note that the claim of deduction of INR 8,45,167/- under Section 80G of the Act was supported by the documents forming part of the assessment record such as the tax audit report, however, the Assessing Officer did not take the same into consideration. The factum of payment of donations was verifiable from the bank statements of the Assessee. However, the Assessing Officer failed to consider the same. Therefore, keeping in view, the totality of the facts and

circumstances of the case, we remand this issue back to the file of Assessing Officer with the directions to decide the issue afresh after taking into consideration all the documents/details which were filed by the Assessing Officer and CIT(A) in relation to the claim of deduction of INR 8,45,167/- claimed under Section 80G of the Act after granting Assessee a reasonable opportunity of being heard. It is clarified that the Assessing Officer shall be free to also call for information/details from the donees/charities. In terms of the aforesaid, Ground No. 2 raised by the Assessee is allowed for statistical purposes.

Ground No. 3

17. Ground No. 3 raised by the Assessee pertains to claim of refund of excess taxed paid on dividend distribution raised as additional ground before the CIT(A).
18. Vide letter dated 13/01/2023, the Assessee also raised an additional ground seeking refund of DDT (paid at the rate of 20.36% as per the provisions of Section 115O of the Act) to the extent the same exceeded the beneficial rate of taxation of dividend specified if the Double Taxation Avoidance Agreement between India and USA, being the country of tax residence of the dividend recipient. However, the aforesaid claim of the Assessee was rejected by the CIT(A).
19. Being aggrieved, the Assessee carried the issue in appeal before the Tribunal.
20. We have heard the rival contentions and perused the material on record including the judicial precedents cited during the course of

hearing.

21. We note that the Special Bench of the Tribunal in the case of Deputy Commissioner of Income-tax Vs. Total Oil Private Limited: 2023] 149 taxmann.com 332 (Mumbai - Trib.) (SB) has held that the provisions of the double taxation avoidance agreement are not triggered when an Indian/domestic company pays dividend distribution tax under Section 115O of the Act. The relevant extract of the aforesaid decision of the Special Bench of the Tribunal reads as under:

"81. If domestic company has to enter the domain of DTAA, the countries should have agreed specifically in the DTAA to that effect. In the Treaty between India and Hungary, the Contracting States have extended the Treaty protection to the dividend distribution tax. It has been specifically provided in the protocol to the Indo Hungarian Tax Treaty that, when the company paying the dividends is a resident of India the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders and it shall not exceed 10 per cent of the gross amount of dividend. While making Reference in the case of Total Oil (supra), the Id. Division Bench has made the following observations on this aspect:

"(f) Wherever the Contracting States to a tax treaty intended to extend the treaty protection to the dividend distribution tax, it has been so specifically provided in the tax treaty itself. For example, in India Hungry Double Taxation Avoidance Agreement [(2005) 274 ITR (Stat) 74; Indo Hungarian tax treaty, in short], it is specifically provided, In the protocol to the Indo Hungarian tax treaty it is specifically stated that "When the company paying the dividends is a resident of India the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders and it shall not exceed 10 per cent of the gross amount of dividend". That is a provision in the protocol, which is essentially an integral part of the treaty,

and the protocol to a treaty is as binding as the provisions in the main treaty itself. In the absence of such a provision in other tax treaties, it cannot be inferred as such because a protocol does not explain, but rather lays down, a treaty provision. No matter how desirable be such provisions in the other tax treaties, these provisions cannot be inferred on the basis of a rather aggressively creative process of interpretation of tax treaties. The tax treaties are agreements between the treaty partner jurisdictions, and agreements are to be interpreted as they exist and not on the basis of what ideally these agreements should have been.

(g) A tax treaty protects taxation of income in the hands of residents of the treaty partner jurisdictions in the other treaty partner jurisdiction. Therefore, in order to seek treaty protection of an income in India under the Indo French tax treaty, the person seeking such treaty protection has to be a resident of France. The expression 'resident' is defined, under article 4(1) of the Indo French tax treaty, as "any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature". Obviously, the company incorporated in India, i.e. the assessee before us, cannot seek treaty protection in India- except for the purpose of, in deserving cases, where the cases are covered by the nationality non-discrimination under article 26(1), deductibility non-discrimination under article 26(4), and ownership non-discrimination under article 24(5) as, for example, article 26(5) specifically extends the scope of tax treaty protection to the "enterprises of one of the Contracting States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State". The same is the position with respect of the other non-discrimination provisions. No such extension of the scope of treaty protection is envisaged, or demonstrated, in the present case. When the taxes are paid by the resident of India, in respect of its own liability in India, such taxation in India, in our considered view, cannot be protected or influenced by a tax treaty provision, unless a specific provision exists in the related tax treaty enabling extension of the treaty protection.

(h) Taxation is a sovereign power of the State- collection and imposition of taxes are sovereign functions. Double Taxation Avoidance Agreement is in the nature of self-

imposed limitations of a State's inherent right to tax, and these DTAA's divide tax sources, taxable objects amongst themselves. Inherent in the self-imposed restrictions imposed by the DTAA is the fact that outside of the limitations imposed by the DTAA, the State is free to levy taxes as per its own policy choices. The dividend distribution tax, not being a tax paid by or on behalf of a resident of treaty partner jurisdiction, cannot thus be curtailed by a tax treaty provision."

82. *We are of the view that the above exposition of law is correct and we agree with the same. Therefore, the DTAA does not get triggered at all when a domestic company pays DDT u/s.115O of the Act.*

Conclusion:

83. *For the reasons give above, we hold that where dividend is declared, distributed or paid by a domestic company to a non-resident shareholder(s), which attracts Additional Income-tax (Tax on Distributed Profits) referred to in sec.115-O of the Act, such additional income tax payable by the domestic company shall be at the rate mentioned in section 115-O of the Act and not at the rate of tax applicable to the non-resident shareholder(s) as specified in the relevant DTAA with reference to such dividend income. Nevertheless, we are conscious of the sovereign's prerogative to extend the treaty protection to domestic companies paying dividend distribution tax through the mechanism of DTAA's. Thus, wherever the Contracting States to a tax treaty intend to extend the treaty protection to the domestic company paying dividend distribution tax, only then, the domestic company can claim benefit of the DTAA, if any. Thus, the question before the Special Bench is answered, accordingly."*

22. It is not disputed that the above decision of the Special Bench of the Tribunal shall apply to the facts of the present case. Therefore, we do not find any infirmity in the conclusion drawn by the CIT(A).

Accordingly, Ground No. 3 raised by the Assessee is dismissed.

Ground No. 4

23. Ground No. 4 raised by the Assessee pertains to levy of interest under Section 234C of the Act which is disposed off as being consequential in nature.

Appeal by Revenue: : ITA No. 1283/MUM/2023

24. We would now take up grounds raised by the Revenue.

Ground No. 1

25. Ground No. 1 raised by the Revenue is directed against the order of CIT(A) accepting the Assessee's claim for deduction under Section 80IC of the Act in respect of Baddi Unit.
26. While framing the assessment, the Assessing Officer had rejected the Assessee's claim for deduction of INR 25,07,79,549/- under Section 80IC of the Act in respect of Baddi Unit of the Assessee on the ground that the product manufactured by the aforesaid undertaking fell was covered under the list of items/things specified in 13th Scheduled of the Act.
27. In appeal against the assessment order on this issue, the CIT(A) overturned the decision of the Assessing Officer, vide order dated 14/02/2023. The CIT(A) concluded that product manufactured by the Assessee was not an article/thing specified in 13th Scheduled of the Act. Therefore, the CIT(A) deleted the disallowance of INR 25,07,79,549/- made by the Assessing Officer and accepted Assessee's claim for deduction under Section 80IC of the Act in respect of the Baddi Unit.

28. Being aggrieved vide order, dated 14/02/2023, passed by the CIT(A) the Revenue is now in appeal before the Tribunal.
29. We have heard the rival submissions and perused the material on record.
30. We find that the Assessee had during course of assessment proceedings, filed copy of sales register containing details of HSN Code for products sold and for the products/raw material internally transferred to other units or sold to 3rd parties by the Assessee along with details submissions, dated 06/04/2021, filed before the Assessing Officer. The aforesaid sale register formed the basis of findings returned by the Assessing Officer during the assessment proceedings and the CIT(A) in the appellate proceedings. However, on perusal of copy of the aforesaid sale register placed on record, we find that the sale register does not pertain to the previous year relevant to the Assessment Year 2017-18. Therefore, both the sides agreed that it would be in the interest of justice to remand the issue raised in the Ground No. 1 back to the file of the Assessing Officer for denovo adjudication. Accordingly, we set aside the order passed by the CIT(A) and the Assessing Officer in this issue. We remand this issue back to the file of Assessing Officer for denovo adjudication. The Assessee is directed to file a copy of the sales register for the relevant previous year before the Assessing Officer. The Assessing Officer is directed to take into consideration HSN Code of the products/items sold by the Assessee in respect of which deduction under Section 80IC of the Act has been claimed by the Assessee in respect of the Baddi Unit for the purpose of determining whether the product manufactured by the Assessee falls with the list of products or thing specified in 13th Scheduled to

the Act. The Assessing Officer is directed to provide to the Assessee a reasonable opportunity of being heard. All the rights and contention of both the parties are left open. It is clarified that in case the Assessing Officer arrives at the conclusion that the Baddi Unit of the Assessee is entitled to the benefit of deduction under Section 80IC of the Act, the Assessing Officer shall be free to examine the computation of deduction claimed under Section 80IC of the Act. In terms of the aforesaid, Ground No. 1 raised by the Revenue is allowed for statistical purposes.

Ground No. 2

31. Ground No. 2 raised by the Revenue is directed against the order of CIT(A) deleting the disallowance of INR 1,09,164/- made by the Assessing Officer in respect of Club Membership Expenses.
32. We have heard the rival submissions and perused the material on record on this issue.
33. The Club Membership Expenses were incurred by the Assessee in the normal course of business. The Assessing Officer was of the view that the aforesaid expenses involved personal element. However, the CIT(A) had returned a finding that in the tax audit report Club Membership Expenses were not classified as personal expenses. The aforesaid finding returned by the CIT(A) has gone uncontroverted in the appellate proceedings before the Tribunal. Further, on perusal of the order impugned, we find that the CIT(A) has allowed deduction for Club Membership Expenses of INR 1,09,164/- by placing reliance upon the judgment of the Hon'ble Supreme Court in the case of CIT Vs. United Glass Mfg. Co. Ltd.: [2012] 28 taxmann.com 429 (SC). The relevant extract of the

decision of the CIT(A) reads as under:

"6.1.4 Ground No.4 is that on the facts and circumstances of the case, the AO erred in making disallowance of Rs.1,09,164/-in respect of expenses incurred on club membership fee.

The appellant's vide its submission in this regard has stated as under:

1. The AO in the assessment order has disallowed an amount of Rs. 1,09, 164/- which was incurred as club membership fees stating that the same cannot be allowed especially when the auditor of assessee's books of account has categorized them to be of personal nature.

2. The Appellant submits that the expenses of Rs. 1,09,164/- reported in tax audit report is towards payment of club membership fees incurred by DIHPL during the year under consideration and the same is incurred for the purpose of its business. No expenses of personal nature have been debited to profit and loss account.

3. The Appellant submits that the club membership fees reported in the tax audit report is not reported as disallowance of expenditure or increase in income. In clause 21(a) of the tax audit report in tax audit report, the details of 'Expenditure incurred at clubs being entrance fees and subscriptions has been reported. However, in this clause there is no disallowance or inadmissibility is reported. Further, the auditor has also not reported these expenses as personal in nature. A copy of relevant extract of tax audit report is attached as Annexure 13.

4. In view of the above, the appellant humbly submits that the AO should be directed to delete the addition made in respect of club membership fees of Rs. 1,09, 164/-

The assessment order and the appellant's submissions were perused. The issue was discussed with the appellant during the course of the hearing on video conferencing and decided as under:

It was explained during the course of the hearing on video

conferencing that on page number 27 of the assessment order, the assessing officer has stated that the submission of the assessee is unacceptable as such liberal interpretation of the term business purpose cannot be allowed especially when the auditor of assessee's books of account has categorised the item as personal in nature. In this regard, the A/R of the appellant has quoted Annexure 13 of the reply, dt. 16th August 2022 i.e, the extract of the tax audit report, wherein the personal expenditure is reported as '0'. It is noticed that the expenditure was not reported there as a personal expenditure. However, expenditure incurred for club being entrance fee and subscription was reported at Rs.1,09,000/-. The Authorised Representative submitted that this is again a wrong interpretation of the Assessing Officer and needs to be allowed. In this regard, reliance is placed on the decision of the Apex court in the case of CIT Vs. United Glass Mfg. Co.Ltd., (C.A. No.6447 of 2012 dt. 12.09.2012) wherein the Hon'ble court has observed and held that

"a series of judgments have been passed by High Courts holding that club membership fees for employees incurred by the assessee is business expense u/s 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 it is a pure business expense".

Considering the ratio of the Hon'ble Apex Court and the explanation of the A/R along supporting documentary evidence furnished, the disallowance made cannot be sustained and is deleted. Accordingly, the ground raised by the appellant is allowed."

34. On perusal of above, we do not find any infirmity in the order passed by the CIT(A) which has been rendered by placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Unit Manufacturing Glass Co. Ltd. (supra) wherein it was held that deduction for Club Membership Expenses incurred by the Assessee was allowable as business expenditure under Section 37(1) of the Act. Thus, we concur with the CIT(A) that in the facts and circumstances of the present case, the disallowance of Club Membership Expenses of INR 1,09,164/- made by the Assessing

Officer was not sustainable. Accordingly, Ground No. 2 raised by the Revenue is dismissed.

35. In result, the appeal preferred by the Assessee as well as the appeal preferred by the Revenue is partly allowed.

Order pronounced on 29.02.2024.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.02.2024
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai