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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI ANIKESH BANERJEE, JM

ITA No.2198/Mum/2024
(Assessment Year: 2018-19)

Avirat Rajendra Sonpal 54/B, Miramar Co-op Hsg, Society, 3, L. Jagmohandas Marg Napeansea Road, Mumbai-400 036 **(Appellant)**	Vs.	**Dy. Commissioner of Income Tax**, CPC, Bangaluru, Piramal Chambers, Lalbaug, Mumbai-400 012 **(Respondent)**

PAN No. AAHPS2278R

Assessee by	:	Shri Vishal D. Shah, AR
Revenue by	:	Shri Manoj Kumar Sinha, DR

Date of hearing: 11.07.2024
Date of pronouncement : 22.07.2024

O R D E R

PER ANIKESH BANERJEE, J.M:

01. Instant appeal of the assessee is preferred against the order of the Ld. Commissioner of Income-tax, appeal, Addl./ JCIT (A), Kochi, [in short, 'Ld. CIT (A)] order passed under Section 250 of the Incometax Act, 1961 (in brevity, 'the Act') order passed for A.Y. 2018-19, passed on 5th March, 2024. The impugned order was emanated from order of the CPC, Bangaluru (in brevity "the AO') passed under Section 143(1) of the Act, date of order 25th December 2018.

02. The assessee has taken following grounds: -

> *"1. On the facts and under the circumstances of the case and in law, the ld. CIT(A) erred in confirming the disallowance made by the AO under section 37(1) of the Income tax Act, 1961 of Rs. 25,49,449/- paid towards membership and subscription fees which were revenue expenditure incurred by the appellant for the sales promotion of the business carried on by the appellant. Therefore, treating it as capital expenditure and personal in nature and affirming the disallowance of the aforesaid business expenditure is bad in law."*

03. Brief fact of the case is that the assessee in individual capacity filed the return and running the business as proprietor. During this impugned assessment year, the assessee paid the membership and subscription fee amountof ₹25,49,449/- and claimed deduction under Section 37(1) of the Act. The assessee filed the return under Section 139(1) of the Act with the tax audit report under Section 44AB of the Act, where the auditor mentioned this expenses in point no. 21(a) "*furnish the details of amounts debited to the profit and loss account, being in the nature of capital, personal, advertisement expenditure etc."*In the membership and subscription column the amount is mentioned as ₹25,49,449/-. In the processing of the return under Section 143(1) of the Act, the learned Assessing Officer has treated the amount as capital expenditure and rejected the assessee's claim under Section 37(1) of the Act. Being aggrieved on the

assessment order, the assessee filed an appeal before the learned CIT (A). The learned CIT (A) upheld the assessment order. Being aggrieved on the appellate order, the assessee filed an appeal before us.

04. The learned Authorized Representative argued and filed a written submission which is kept in record. The ld. ARargued that during processing of the return under Section 143(1) of the Act, the learned Assessing Officer disallowed the claim and rejectedthe revenue expenditure. The assessee was asked the explanation for rejection of claim and the reply of show cause was filed related to adjustment under Section 143(1) of the Act. The assessee fully relied on the order of Hon'ble **Gujarat High Court** in the case of **PCIT Vs. Bayer Vapi (P.) Ltd. (2019) 106 taxmann.com 395 (Gujarat).** The relevant paragraph is duly inserted as below:-

> *"4.4 The Tribunal relied upon the decision of this Court in case of Gujarat State Export Corpn Lad [1995] 80 Taxman 568/[1994] 209 ITR 649, wherein the payment of fees to the Sports Club of Gujarat Limited has been examined and it was held that if the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefits of the business, it is properly attributable to capital and is of the nature of capital expenditure However, if it is made for running the business or working with a view to produce the profits, it is a revenue expenditure. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a*

revenue expenditure In view of this test laid down, the court, therefore, held that the payment of entrance fee for becoming a member of the sports club cannot be termed as a capital expenditure The Tribunal also relied upon the decision of Delhi High Court in case of CIT v Samtel Color Ltd. [2009] 180 Tasman 82.120101 326 11R 425, where it is held that the expenditure incurred by the assessee by way of admission fee paid to obtain corporate membership of club, entitled it to sponsor specified number of its employees to enjoy the benefits of club for which separate payments had to be made and such membership allowed employees to interact with its customers, it could be said that the expenditure was incurred wholly and exclusively for purpose of business and was to be allowed as business expenditure. The Tribunal also relied upon the decision in case of (77 v Groz Beckert Asia Ltd 2013 31 tasmann.com 155/214 Taxman 205 (Punj & Har) wherein it is held that subscription fees paid for membership of golf club is revenue expenditure The Tribunal therefore, came to the conclusion that the expenditure incurred for membership fees of club by CMD and the director of the assessee company is in the nature of revenue expenditure.

4.5 In view of above settled legal position, it cannot be said that the Tribunal has committed any error of law in allowing membership fees of Rs 22,000/- paid to club by the Chairman and the Managing Director as revenue expenditure."

05. The learned Authorized Representative further relied on the order of Hon'ble **High Court of Bombay** in the case of **Swiss Re Services India (P.) Ltd. Vs. DCIT (2023) 156 taxmann.com 56 (Bombay)**. The relevant paragraph is duly inserted as below:-

> *"14. Similarly, the Hon'ble Delhi High Court in CIT v. Samtel Color Ltd. (2009) 180 taxmann.com 82 (2010 326 ITR 425 held that admission fees paid to the club towards corporate membership is wholly and exclusively for business purpose and is revenue in nature. Paragraphs 5 to 5.3 of Samtel Color Ltd. (supra) read as under*
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> > *5. Having heard the learned counsel for impugned judgment of the Tribunal deserves to be upheld for the following reasons the Revenue as well as the assessee we are of the view that the of the Act was the correct*
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> > *5.1 The expenditure incurred towards admission fee, admittedly, was towards corporate membership. Av correctly held by the Tribunal, the nature of the expenditure was one for the benefit of the assessee. The business purpose basis adopted approach. This is more so in view of for eligibility of expenditure under section 37 the Tribunal's findings that it was the assessee which nominated the employee who would avail the benefit of the corporate membership given to the assessee.*

5.2 The other hurdle for qualification of the expenditure under section 37 of the Act is that expenditure incurred should not be on capital account. The Assessing Officer came to the conclusion that the expenditure was of a capital nature based on a fallacious reasoning that the expenditure was of an enduring nature and hence on a capital account. It is well settled that an expenditure which gives enduring benefit is by itself not conclusive as regards the nature of the expenditure. We may all that even lump sum payment, which was the case in the instant matter, is not decisive as regards the nature of the payment. See observations in Empire Jute Co Ltd. v. CITES) as also the poligment of the Division Bench of this Court in CIT v. J.K. Synthetics ITR Nos. 139/1988 & 202/1989. The true test for qualification of expenditure under section 37 of the Act is that it should be incurred wholly and exclusively for the purposes of business and the expenditure should not be towards capital account. In the instant case, as discussed above, the admission fee paid towards corporate membership is an expenditure incurred wholly and exclusively for the purposes of business and not towards capital account as it only facilitates smooth and efficient running of a business enterprise and does not add to the profit earning apparatus of a business enterprise.

5.3 To support the Revenue's contention that the impugned expenditure is on capital account the Learned counsel, Ms. Prem Lata Bansal has cited the judgment of the Framatone Connector OEN Ltd. V. DCIT (2006) 157 taxman 116. The said judgment is based on the Supreme Court judgment in the case of Punjab State Industrial Development Corporation Ltd vs. CIT; (1997) The judgment of the Supreme Court on which the Kerala High Court has relied heavily dealt with the issue with regard to fee paid to the Registrar of Companies for increase of authorized capital, that is, whether such an expense was in the nature of revenue or capital expenditure. The Supreme Court came to the conclusion that since the fee was paid to the Registrar of Companies for increase in the capital base of the assessee it was in the nature of capital expenditure. According to us the ratio of the afore-mentioned Supreme Court judgment is not applicable to the expenses incurred on an admission fee for corporate membership. We respectfully disagree with the ratio of the judgment of the Kerala High Court. In turn, we respectfully follow the ratio of the judgment of the Division Bench of this Court in CII v. Nestle India Ltd 2008 296 ITR 682 that of the Bombay High Court in the case of Otis Elevator Co (India) Ltd. v. CIT (1992) 195 ITR 682.

15. In our view also the expenditure incurred towards entrance fees and annual membership would be a revenue expenditure because it has been incurred wholly and exclusively for the purposes of business and not towards capital account. Such expenditure only facilitates the smooth and efficient running of the business enterprise and does not add to the profit earning apparatus of the business enterprise. Therefore, Rule issued on 30th July 2014 is made absolute. The impugned notice dated 29th March 2010 is quashed and set aside."

06. The learned Departmental Representative argued and fully relied on the order of the revenue authorities.

07. We heard the rival contentions and considered the documents available on record. The assessee is a proprietor and running business in his own hand. The adjustment was made of the membership fees of the club under Section 143(1) of the Act during the processing of return. The assessee was duly asked about the adjustment and reply was given and objection was filed. The learned AR argued that the assessee has taken this membership for his business promotion and for development of his business. Out of the business hour the connection with customer and the meeting with the parties are conducted in the club premises.So, this membership is very much connected for the furtherance of the business. We respectfully relied on the order of the Hon'ble Gujarat High Court in case of **Bayer Vapi (P.) Ltd.**(*supra*) and Hon'ble Jurisdictional High Court in the case of**Swiss Re Services India (P.) Ltd.** (*supra*). In our considered view, expense claimed in the head of revenue

expenditure under Section 37(1) of the Act is related with the business of the assessee. Accordingly, we set aside the appellate order and the addition amount of ₹25,49,449/- is quashed.

08. In the result, the appeal of the assessee bearing in **ITA No. 2198/Mum/2024**, is allowed.

Order pronounced in the open court on 22 .07.2024.

Sd/-	Sd/-
(PRASHANT MAHARISHI)	(ANIKESH BANERJEE)
(ACCOUNTANT MEMBER)	(JUDICIAL MEMBER)

Mumbai, Dated: 22. 07.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai