IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI

BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA No. 797/MUM/2023
Assessment Year: 2019-2020

BalrajsinghJagjitsingh Kharbanda, C/3, Ravi Darshan, Sherly Rajan Road, Bandra West, Mumbai-400050. **PAN No. ADHPK 1733 G**	***Vs.***	ADIT, CPC Bangalore, CPC, Bangalore-560500.
Appellant		**Respondent**

Assessee by	:	Mr. Rajesh S. Kothari
Revenue by	:	Kamble Minal Mohan, DR
Date of Hearing	:	05/06/2023
Date of pronouncement	:	07/06/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 18.01.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2019-2020, raising following grounds :

> *1. The learned Hon'ble Commissioner of Income-tax (A) erred in confirming the disallowance of Associateship fees of Rs. 10,76,720 paid to Mumbai Cricket Association towards licence for using its facility wholly and exclusively*

for the purposes of his business disregarding th following factual aspects:

a. The present area of the office premises of the assessee is not sufficient to cater the needs of the visitors or customers of the assessee. The sales team of the assessee also meets at Mumbai ricket Association in view of shortage of space at the office.

b. The assessee used the premises of Mumbai Cricket Association or meeting its

customers on regular basis.

c. The expenses are incurred as licence for using the facility of the Association.

d. There is no enduring benefit availed by the assessee.

e. The expense incurred is not a capital expenditure. f.

The licence fee is not transferable and available only till the life of the proprietor of the business.

g. The expenses incurred is commensurate with the assessee's turnover for the year.

2. The learned Hon'ble Commissioner of Income-ta (A) erred in confirming the disallowance of Associateship fees of Rs. 10,76,720 made by the PC while passing an intimation u/s. 143(1) of the Income-tax Act, 1961 though it is not an adjustment as prescribed u/s. 143(1)(a) of the Act and it is a debatable issue on the facts and circumstances of the case and in law.

2. Briefly stated, facts of the case are that th assessee , an individual, filed return of income for the year under consideration which has been processed by the Centralized Processing Centre, Bangalore (CPC) on 02.06.2020 under section 143(1) of the Income-tax Act, 1961 (in short 'the Act') . In order u/s 143(1) of the Act

i.e.intimation order, the Ld. CPC made upward adjustment of Rs.10,76,720/- to the returned income.

3. Aggrieved, the assessee filed appeal before the Ld. CIT(A) and claimed that this amount of Rs.10,76,720/-, which was paid for the entry fee of the membership of Mumbai Cricket Association, Bandra, for the benefit of the employees and for entertaining the customers of its business, therefore, same is allowable expenditure in terms of section 37 of the Act. The Ld. CIT(A), however rejected the contention of the assessee observing as under:

> *"5.1I have carefully considered the submissions of the appellant. Appellant submitted that the amount of Rs.10,76,720/- paid to Shirke Infrastructure Ltd. which is managing the MCA Recreation Centre at Bandra Kurla Complex, Bandra East is club membership fee taken for the benefit of employees and entertaining the guests in its business. There is no doubt a business man has to entertain the guests for the business promotion. However, the issue here is, there are two kinds of payments to clubs. One is 'Club membership fee' paid as one time payment for getting the membership and second kind of payment is running expenditure paid for usage of club, food and beverages etc. There is no doubt that the expenditure incurred for using the club food and beverages expenses for entertaining the business guests is an allowable expenditure, but the 'club membership fee' is not a revenue*

expenditure but it is a 'capital expenditure'. Section 37 reads as under.

"37. (1) Any expenditure (not being expenditure of the nature desc ibed 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 e allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Condition for allowance under section 37

Such expen iture should not be covered under the specific section i.e. sections 30 to 36.

Expenditure should not be of capital nature

The expenditure should not be of personal nature.

The expenditure should be incurred during the previous year.

The expenditure should have been incurred wholly or exclusively for the purpose of the business or profession.

The business should be commenced.

5.2 In this case, the membership fee paid to the club is admittedly a onetime membership fee paid to a Club, MA Recreation Centre, which is capital in nature.Therefore, the disallowance made by the AO-CPC is in order and confirmed. Ground number 1 is dismissed."

4. Before us, the Ld. Counsel of the assessee filed a paper book containing pages 1 to 117 including a copy of the return of income and tax audit report in prescribed form, i.e. form No. 3CD of Income-tax Rules, and submitted that the club membership fee cannot be disallowed or *prima facie* adjusted while passing intimation u/s 143(1)(a) , because ***firstly***, it is not an adjustment prescribed under section 143(1)(a) of the Act,***secondly***, the disallowance of club membership fee as capital expenditure u/s 37(1) of the Act isa debatable issue ,therefore, the Ld. CPC is not justified in making adjustment invoking section 143(1)(a) of the Act. The learned counsel in support of the contention, relied on the decision of Tribunal in the case of **ChetasGulabbhai Desai Vs DCIT in ITA No. 1934/Mum/2021** and in the case of **SCV & LLP Vs DCIT in ITA No. 1756/Del/2020.** The Ld. Counsel also justified that on merit also the expenditure incurred on entries fees of the club is allowable expenditure. In support of contention, he relied on (i) the decision of the Tribunal in the case of **DCIT Vs Deloitte Touche Tohmatsu India P. Ltd in ITA No. 276,277,2200 & 3017/Mum/2016** , (ii) Decision of Hon'ble Supreme Court in the case of **CIT Vs United Glass mfg Co. Ltd in Civil Appeal no. 6447 of 2012**, (iii) **ITA No. ITA No. 6611/Mum/2008** in the case of **DCIT v. Banc of America Securities (India) (P) Ltd. (Mum ITAT) (iv) ITA Nos.4281 & 4983/Mum/2011 for assessment year 2006-07**in the case of **Clariant Chemicals (I) Ltd. v. Addl. CIT (Mum ITAT)** and decision of Hon'ble Gujrat High Court in the case

of **PCIT Vs Bayer Vapi P Ltd reported in (2019) 106 taxmann.com 395 (Guj).**

5. On the other hand, the Ld. Departmental Representative (DR) submitted that the Ld. CPC has made adjustment on the basis of the information available in the 3CD report, which was filed along with return of income and there being variation in the 3CD report and in the return of income on the issue of membership fee, the Ld. CIT(A) is justified in upholding the adjustment in terms of section 143(1)(a) of the Act. On the merit, the learner DR submitted that the assessee has acquired club membership in the individual name which is for personal purposes and cannot be held as acquired for the purpose of the business. He submitted that any expenses for entertaining business customer during club visit, could have been allowed as business expenditure subject to verification, however the one-time entrance fee for acquiring club membership by individual member cannot be treated as business expenditure. He distinguished the cases relied upon by the assessee and submitted that in the cases relied upon by the assessee subject matter was related to the corporate membership acquired for the benefit of the employees as well as for entertaining business customers by the employees.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the Ld. CPC has made disallowance of expenditure of

Rs.10,76,720/- invoking section 143(1)(a)(iv) of the Act, for the reason that amount disallowed by the Tax Auditor in the audit report i.e. form No. 3CD, has not been taken into account by the assessee while computing the total income in the return. The ld. CPC has also invoked section 143(1)(a)(ii) holding the same as incorrect claim by the assessee. The CPC has also held this adjustment as an arithmetic error u/s 143(1)(a)(iv) of the Act.

6.1 The relevant provisions of section 143(1)(a) of the Act referred by the Ld CPC are reproduced for ready reference:

> *(a) the total ncome or loss shall be computed after making the following adjustments, namely:-*
>
> *(i)* ***any arithmetical error in the return;***
>
> *(ii)* ***an incorrect claim, if such incorrect claim is apparent from any information in the return;***
>
> *(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;*
>
> *(iv)* ***disallowance of expenditure or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;***
>
> *(v) disallowance of deduction claimed under "[section 10AA or under any of the provisions of Chapter VI-A under the heading"C. -Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or*
>
> *(vi) addition of income appearing in Form 26AS or Form 16A or Form16 which has not been included in computing the total income in the return:*

***Provided** that no such adjustments shall be made unless an intimation is given to the assessee of such adjus ments either in writing or in electronic mode:"*

6.2 On perusal of the tax audit report in Form No. 3CD filed by the assessee, we find that under the clause 21(a), thetax auditor listed the items, which are in the nature of the capitalexpenditure, personalexpenditure, advertisement expenditure etc. which are not allowable u/s 37(1) of the Act. The relevant clause of the tax audit report is reproduced as underfor ready reference:

21	a	Please furnish the details of amounts debited to the profit and loss account, being in the nature of capital, personal advertisement expenditure etc	
		Capital expenditure	
		Particulars	Amount in Rs
		Personal expenditure	
		Particulars	Amount in Rs
		Advertisement expenditure in any souvenir, brouchure, tract, pamphlet or the like published by a political party	
		Particulars	Amounts in Rs.
		Expenditure incurred at clubs being entrance fees and subscripts	
		Particulars	Amount in Rs
		Membership Fees	**1076720**
		Expenditure incurred at clubs being cost for club services and facilities used.	
		Particulars	Amount in Rs
		Expenditure by way of penalty or fine for violation of any law for the time being force	
		Particulars	Amount in Rs
		Expenditure by way of any other penalty or fine not covered above	
		Particulars	Amount in Rs.
		Interest on TDS	986
		Expenditure incurred for any purpose which is an offence or which is prohibited by law	
		Particulars	Amount in Rs.

6.3 However,in clause 15 under**Schedule BP: computation of income from business or provision,**of return of income, the assessee reported the amounts debited to the profit and loss

account as expenditure disallowable u/s 37 amounting to Rs. 986/- only. This amount has been taken from clause 7 of Part A-OI of the return of income. The relevant clause 7 of Part A-OI is reproduced as under:

7	Amounts debited to the profit and loss account, to the extent disallowable under section 37			
	a	Expenditure of capital nature [37(1)]	7a	0
	b	Expenditure of personal nature [37(1)]	7b	0
	c	Expenditure laid out or expended wholly and exclusively NOT for the purpose of business or profession [37(1)]	7c	0
	d	Expenditure on advertisement in any souvenir, brochure, tract, pamphlet or the like, published by a political party[37(2B)]	7d	0
	e	Expenditure by way of penalty or fine for violation of any law for the time being in force	7e	0
	f	Any other penalty or fine	7f	986
	g	Expenditure incurred for any purpose which is an offence or which is prohibited by law	7g	0
	h	Amount of any liability of a contingent nature	7h	0
	i	Any other amount not allowable under section 37	7i	0
	j	Total amount disallowable under section 37(total of 7a to 7i)	7j	986
8	A	Amounts debited to the profit and loss account, to the extent disallowable under section 40		
	a	Amount disallowable under section 40 (a)(i) on account of non-compliance with provisions of Chapter XVII-B	Aa	0
	b	Amount disallowable under section 40(a)(ia) on account of non-compliance with the provisions of Chapter XVII-B	Ab	0
	c	Amount disallowable under section 40 (a)(ib), on account of non-compliance with the provisions of Chapter XVII-B	Ac	0
	d	Amount disallowable under section 40(a)(iii) on account of non-compliance with the provisions of Chapter XVII-B	Ad	0
	e	Amount of tax or rate levied or assessed on the basis of profits[40(a)(ii)]	Ae	0
	f	Amount paid as wealth tax[40(a)(iia)]	Af	0
	g	Amount paid by way of royalty, license fee, service fee etc. as per section 40(a)(iib)	Ag	0
	h	Amount of interest, salary, bonus, commission or remuneration paid to any partner or member[40(b)]	Ah	0
	i	Any other disallowance	Ai	0
	j	Total amount disallowable under section 40(total of Aa to Ai)	Aj	0

6.4 On perusal of the above information, which was submitted by the assessee along with the return of income, it is evident that in the tax audit report, the auditor has included the amount club membership fee of Rs.10,76,720/-, being entries fees and subscription in the nature of not allowable expenditure. In the

clause 21(a) of the proforma of tax audit report, there are separate rows for club membership subscription fee (i.e. entrance fee) and expenses incurred for utilising the club services. The tax auditor has not proposed any disallowance for expenses incurred for utilising club services, whereas he has inferred amount for acquiring membership of the club as not in the nature of amount allowable under section 37 (1) of the Act. However, in the return of income, the assessee has not included said amount of membership for computation of the income and hence, the Ld. CPC has made adjustment while passing u/s 143(1) of the Act.Before us, the Ld. Counsel of the assessee submitted that the adjustment made is not falling u/s 143(1)(a) of the Act. In the decisions relied upon by the learned counsel of the assessee in the case of Chetas Gulabbhai Desai (supra) and SCV and LLP (supra), while processing the return of income under section 143(1) of the Act no oppournity was granted to the assessee to put forth his stand before disallowing the expenditure , whereas in the instant case the assessee was granted due oppournity for the proposed disallowance by the learned CPC, therefore the ratio of decisions relied upon by the learned counsel of the assessee are not applicable over the facts of the nstant case .

6.5 He submitted that whether the membership fee is in the nature of capital expenditure, is a debatable issue. Before us, with regard to adjustment invoking section 143(1)(a)(iv) of the Act is concerned, the Ld. Counsel submitted that the tax auditor has not

reported the expenditure as disallowable, whereas he has given only list of the expenditure under the clause 21 for the purpose of the tax audit report. We don't agree with the contention of the ld. counsel of the assessee. In the clause 21, the items listed are the items, which are in the nature of items disallowable u/s 37(1) of the Act. The tax auditor has not considered the expenses incurred for utilising the services of the club as disallowable under section 37 (1) of the Act and therefore reported the amount as nil against the relevant row. If the contention of the learned counsel of the assessee is accepted, then the tax auditor was required to mention the amount against the cost of services availed by the assessee from club, but the tax auditor has not reported any such amount, which means in the relevant clause 21 (a), he has reported the amounts which are in the nature of non-allowable category under section 37(1) of the Act. The Section 143(1)(a)(iv) prescribes for taking item of expenditure which have been indicated by the tax auditor in audit report as in the nature of disallowable, therefore, the CPC has validly followed the provisions of law while making adjustment in terms of section 143(1)(a)(iv) of the Act.

6.6 As far as arguments that disallowance of club membership being debatable, we find whether the club membership entry fee is a capital expenditure or not, the Tribunal in the case of Deloitte Touche Tohmatsu India P Ltd (supra), relied on the decision of the Hon'ble Supreme Court in the case of United Glass Mfg Co. Ltd

(supra), wherein it is held that club membership fees for employees incurred by the assessee is business expenses under section 37 of the Act. In the instant case membership fee expenses have been incurred for acquisition of membership for assessee individual and not for employees. The membership entry fee paid by the assessee is not for corporate membership. Further, the Tribunal in the case of **Dy. Commissioner of Income-tax Banc of America (supra)** held as under:

> *"13. Respectfully following the above decisions of the Hon'ble Jurisdictional High Court and the Tribunal in the assessee's own case and for the reasons as mentioned in para 5.3 in the case of SamtelColour Ltd. supra,* ***we are of the view that admission fees paid towards corporate membership of the club is an expenditure incurred wholly and exclusively for the purpose 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 and accordingly we are inclined to uphold the finding of the ld. CIT(A) in deleting the disallowance of Rs.16.00 lacs made by the Assessing Officer. The grounds taken by the revenue are, therefore, rejected."*

6.7 Further, the Tribunal in the case of **Clariant Chemicals (I) Ltd. (supra)** held that membership entries fees paid to the club expenditure is allowable. The relevant finding is reproduced as under:

> *"5. Before us, both the parties agreed that this issue had come up for consideration before the Tribunal in assessment year 2004–05, in assessee's own case wherein the Tribunal while allowing the assessee's claim has followed the decision of Hon'ble Jurisdictional High Court in levator Co. India Ltd. (supra). Thus, in view of the aforesaid admitted*

position and also the judicial precedence of the arlier year, we also hold that ***such an expenditure incurred on account of payment of membership entrance fee paid to the club is an allowable expenditure*** *and, accordingly, we affirm the findings of the learned Commissioner (Appeals). Thus, ground no.1, as raised by the Revenue is dismissed."*

6.8 In view of the decisions of the Tribunal cited above it is evident that membership entries fee to club could be business expenditure in case of "corporatemembership",but not in case of individual club membership. In the case of Bayer Vapi P Ltd (supra) also the issue was related to membership of the employees of the company including Chairman and Managing Director. In the grounds raised, the assessee has submitted that club membership was used by his employees and customers of business, but as per the normal rules of the club, such individual membership can't be allowed by other than individual except as a guest accompanied with the said individual. Thus, as far as individual assessee, is concerned, disallowance of club membership for one time entry fee is not debatable and correctly disallowed by the CPC invoking section 143(1)(a) of the Act. On merit also, the claim of club membership one time entry fee is disallowable on the ground of personal expenditure. Even if the assessee uses its club facility for soliciting customers, the recurring expenditure may be allowed as business expenditure subject to verification but not the one-time entry fee.

The Hon'ble Madars High Court in the case of **L Jairam Parwani vs DCIT reported in (2018) 93 taxmann.com 291 (Madras)** held

that payment made or acquiring membership in a social club could not be allowed as b siness expenditure , more so, when there was no evidence to prove that membership of Social club was acquired for entertaining customers by the assessee. Therefore, the Ld. CPC is justified in making adjustment u/s 143(1)(a) the Act. The ground Nos. 1 and 2 of the appeal of the assessee are accordingly dismissed.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 07/06/2023.

Sd/-	**Sd/-**
(VIKAS AWASTHY)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 07/06/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

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(Assistant Registrar)
ITAT, Mumbai