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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.3742/Mum/2019
(**निर्धारण वर्ष** / Assessment Year: 2013-14)
&
आयकर अपील सं/ I.T.A. No.3743/Mum/2019
(**निर्धारण वर्ष** / Assessment Year: 2014-15)
&
आयकर अपील सं/ I.T.A. No.3744/Mum/2019
(**निर्धारण वर्ष** / Assessment Year: 2015-16)

JCIT (OSD)-8(1)(1) Room No. 625, 6th Floor, Aayakar Bhawan, Maharshi Karve Marg, Mumbai-400020.	**बनाम**/ Vs.	M/s. Royal Western India Turf Club Ltd. Mahalaxmi Race Course, Mahalaxmi, Mumbai-400034.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCR8519H		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Sumit Lalchandani
Revenue by:	Smt. Mahita Nair (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 27/07/2022
घोषणा की तारीख /Date of Pronouncement: 02/09/2022

आदेश / O R D E R

PER ABY T. VARKEY, JM:

These are revenue appeals against the order of the Ld. Commissioner of Income Tax (Appeals)-14, Mumbai dated 27.02.2019 for assessment year 2013-14, AY 2014-15 & AY 2015-16 respectively.

2. At the outset, the Ld. AR of the assessee submits that the grounds of appeal preferred by the revenue are similar especially ground no. 1 & 2 for all the years (AY. 2013-14 to AY. 2015-16) and the additional ground is only for appeals pertaining to AY 2014-15 and AY 2015-16 which is related to disallowance made u/s 14A of the

Income Tax Act, 1961 (hereinafter "the Act"). Since the grounds of appeals are similar, we take up the appeal relating to the AY 2013-14 as the lead case for ground no. 1 & 2 which decision will be followed for all the other captioned years.

3. The ground no. 1 of the revenue reads as under: -

> "i) "Whether on the facts and circumstances of the case and in law the Hon'ble CIT(A) was justified in treating the entrance fees amounting to Rs, 3,96,30,000/- received from its members as capital receipts as against revenue receipts ignoring the facts that facilities that are made available to the members are done in normal course of its business as the assessee is engaged in the business of race course?"

4. At the outset, the Ld. AR of the assessee submitted that the issue regarding the treatment of entrance fees received from the members was held by the AO as revenue receipts, whereas the assessee's claim was that it was a capital receipt, so, not taxable. Aggrieved by the action of the AO, the assessee preferred an appeal before the Ld. CIT(A) who upheld the claim of the assessee and held it to be capital receipt. At the out-set, it was pointed out by the Ld. AR that the issue is covered by the decision of the ITAT in assessee's own case as well as by the decision of Hon'ble High Court in assessee's own case and drew our attention to the order of the Hon'ble Bombay High Court placed at page no. 1 to 3 for AY. 2009-10 wherein the question of law raised before the Hon'ble High Court was as under: -

> "i. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in treating the entrance fees amounting to Rs.7,51,05,500/- received from its member as capital receipts as against revenue receipts ignoring the facts that facilities that

are made available to the members are done in normal course of its business as the assessee is engaged in the business of race course?"

5. And the Hon'ble High Court held as under: -

> "3. Revenue impugned the said order before the Income Tax Appellate Tribunal (ITAT) which by an order dated 27th July, 2016 dismissed the appeal of the Revenue. The ITAT held that there is no dispute to the fact that right from practically the date of incorporation i.e., 1925 onwards, the entrance fee from the members was treated as capital in nature and majority of these orders were passed under Section 143(3) of the Income Tax Act, 1961 (the Act). The ITAT also relied upon the judgment of this court in CIT vs. Diners Business Services Pvt. Ltd. 263 ITR 1 (Bom.) and held that any sum paid by a member to acquire the rights of a club is a capital receipt. The ITAT has relied upon various receipts and held that the view of the Assessing Officer to treat the entrance fee as revenue receipt and not capital receipt was incorrect.
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> 4. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law."

6. In the light of the Hon'ble High Court's decision on this issue we note that in assessee's own case for AY 2009-10, the Tribunal's decision that the entrance fees received by the assessee has to be treated as capital receipt has been upheld. And since the Ld DR could not point out any change in facts or law in respect of any of the assessment years before us, we respectfully following the order of the

Tribunal/High Court (supra), uphold the order of the Ld. CIT(A) and dismiss this ground of appeal of revenue.

7. Ground no. 2 of the revenue reads as under: -

> "(ii) "Whether on the facts and circumstances of the case and in law the Hon'ble CIT(A) was justified in treating the contribution received from members towards infrastructure facilities amounting to Rs. 81,00,000/as capital receipts as against revenue receipts ignoring the facts that the voluntary contribution towards various infrastructure facilities of the club by the members are for the special facilities that are made available to the members by the club and same is done in the normal course of its business?"

8. At the outset, the Ld. AR of the assessee submitted that the assessee treated the contribution received from the members towards infrastructure facilities as its capital receipt, whereas the AO held it as revenue receipt. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who upheld the claim of assessee and treated the same as capital receipt. On this issue, it was pointed out by the Ld AR of assessee that the action of Ld. CIT(A) is in the line with the decision of the Tribunal in assessee's own case for AY 2012-13; and drew our attention to page no 51 of the P.B wherein the Tribunal took note of this issue at page no. 3 of its order for AY 2012-13, wherein the Tribunal took note of the facts that the AO was of the opinion that onetime payment made by the members to assessee was for the special facilities, which was in the ordinary course of business and therefore according to him, it cannot be treated as capital receipt and made an addition of Rs.16,81,93,250/-; and that on appeal the Ld. CIT(A) held

that the voluntary contributions received from the members towards infrastructure facilities were contribution received for specific purpose and should be treated as capital receipt. And on appeal by the revenue, the Tribunal upheld the action of Ld. CIT(A) on this issue and held as under: -

> "7. In respect of the second disputed issue with regard to voluntary contribution from the members for infrastructure facilities. The contentions of the Ld. DR that the CIT(A) has erred in treating the same as revenue receipt and granted the relief. The Ld. AR submitted that the assessee has received the voluntary contribution from the two members and referred to paper book at page 119 and 120, where the confirmations in respect of voluntary contribution made by the two members for mutual benefit of members of the club are filed. Further, the Ld. AR emphasized that on such similar issue, the Hon'ble Coordinate Bench of this Tribunal in the case of DCIT Vs. KDA Enterprises (P.) Ltd. ITA no 2662/M?2013 has held at para 31 and 32 as under:
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> "31. As per the provisions of law prevailing during the year under consideration, the gift received by one corporate body from another corporate bodies do not come under the ambit of income as contemplated u/s 2(24) of the Act or any other provisions of the Act. The gift received are a voluntary payments made by the donors to the assessee. Neither the assessee has any legal right to claim the gift from the donor nor donors have any legal or contractual obligations to give gift to the assessee. The gifts received by the assessee was a voluntary payments made by the donor, without consideration to the assessee. The gift received has nothing to do with the business of the assessee so as to constitute its income from business or a revenue receipt in the nature of income.

32. As per section 14 of the Act, income of an assessee is classified under the following heads of income viz ―Salaries, Income from house property, Profit and gains of business or profession‖, Capital gain and Income from other sources. Provisions of the Act provides for what can be considered as income under the various heads of income. Thus income of an assessee shall be chargeable to tax only if it falls under any heads of income. Thus gift received is neither in the nature of Salary nor in the nature of income from house property. By no stretch of imagination it can be said that the assessee is engaged in the business of receiving gifts from corporate bodies; hence the gift can also not be considered as the income from business of the assessee. As the gift has no relation to any capital asset, the same can also not be considered as capital gain for the assessee. With respect to income from other source, that income of every kind which is not chargeable to tax under any head of income are subjected to tax under the residuary head of income i.e. income from other sources. However again what is subjected to tax under the provisions of section 56 is income of revenue nature. The gift was always treated as non taxable capital receipt in the hands of the recipient till 31.03.2005. Thereafter the legislature vide Finance (No.2) Act, 2004 w.e.f. 1.04.2005 inserted clause (v) to sub section (2) of section 56 of the Act so as to include any sum of money received without consideration from any person, other than exception provided in that section, by an individual or Hindu Undivided Family was made subjected to tax. The scope of the said section was further narrowed down by raising the limit of receipt from Rs.25,000/- to Rs.50,000/- with effect from 1.04.2006. The said section was amended from time to time by amending the limit of receipts and nature of transaction but the applicability of the said section was restricted only to an individual or Hindu Undivided Family. Thus when the legislature intended for bringing to tax-net the

gift received by an assessee it has specifically provided so by enacting the law. As per section 56(2)(v) the gifts received by an individual and HUF only are made liable to tax. Thereafter for the first time two other category of assessees were added with effect from 1.06.2010 by Finance Act, 2010 in clause (viia) of section 56(2) of the Income Tax Act, 1961. These two categories of the assessees are ―a firm and ―a company. However, the parliament restricted the taxability to receipt in the form of shares of an unlisted company without consideration or without sufficient consideration. Thus even after this amendment, any other movable / immovable properties received as gift was not covered and accordingly not subjected to tax. However, certain gifts are made taxable from time to time by various well thought and well intended amendments in the Act and all the definition regarding taxability of gift (i.e. receipt of assets without sufficient or without any consideration) are inclusive and only those instance of gifts are required to be taxed and not all gifts. This is so, more particularly, because all gifts are capital receipt in nature and only certain gifts are made taxable. As provisions of Section 56(2)(v)(vi), (vii) and (viia) specifically covers the instances of gift which are taxable under the provisions of IT Act; and all other gifts received by the assessee other than those covered in other sections are not chargeable to tax being capital receipt in nature. Hon'ble Supreme Court in the case of Padmaraje R. Kadambande Vs. CIT, 195 ITR 877 (SC); Hon'ble Bombay High Court in case of Mehboob Productions Private Ltd. Vs. CIT, 106 ITR 758 and in case of H.H. Maharani Shri Vijaykuverba Saheb of Morvi & Anr. Vs. CIT, 49 ITR 594, held that gifts are capital receipts when consideration are not in the nature of income and, hence, same cannot be charged to tax under the provisions of Income Tax Act.

> 8. We considered the Coordinate Bench decisions, and the facts which are identical and similar in the earlier years observe that the Ld.DR could not controvert the findings of the CIT(A) with any new cogent evidence or information. We find the Ld.CIT(A) has granted the relief relying on the assessee's own case of earlier years and passed a reasoned order. Accordingly, we up held the order of the Ld.CIT(A) on these disputed issues and dismiss the grounds of appeal of the revenue."

9. We note that the Ld CIT(A) has granted the relief to the assessee on the issue, which is in line/view of the Tribunal in assessee's own case as noted supra. And since the Ld DR could not point out any change in facts or law in respect of any of the assessment years before us, we respectfully following the order of the Tribunal, uphold the impugned action of the Ld. CIT(A) on this issue i.e. ground no. 2 and dismiss this ground of appeal of revenue.

10. In the light of the aforesaid discussion ground nos. 1 & 2 for AY 2013-14, AY 2014-15 & AY 2015-16 stands dismissed on the very same reasoning mutatis mutandis to the relevant years concerned. Thus, we uphold the order of the Ld. CIT(A) and dismiss the ground nos. 1 & 2 of all the three (3) appeals of the revenue.

11. The only remaining issue is with regard disallowance made u/s 14A of the Act i.e. ground no. 3 & 4 for AY 2014-15 & AY 2015-16.

12. At the outset, the Ld. AR of the assessee brought to our notice that the assessee did not receive any exempt income which fact is undisputed before us. In this factual back ground, we take note of the decision of the Hon'ble Delhi High Court in the case of **Cheminvest**

Ltd. vs CIT (378 ITR 33) wherein the Hon'ble High Court held that when the assessee did not earn any exempt income, no disallowance u/s 14A of the Act is warranted. This view has been followed by this Tribunal in the recent decision in the case of CIT Vs. V.K. Raheja Corporate Services Pvt. Ltd (ITA. No. 1970/Mum/2021 & ITA. No. 2218/Mum/2021 dated 03.08.2022) wherein we also have held that the amendment inserted in Section 14A of the Act vide Finance Act, 2021 is prospective in operation. So we following the decision of the Hon'ble Delhi High Court in Cheminvest Ltd. uphold the action of Ld. CIT(A) that if no exempt income is received by the assessee, no disallowance u/s 14A of the Act is warranted. Thus, this grounds of appeals of the revenue for AY 2014-15 and AY 2015-16 stands dismissed.

13. In the result, all the captioned appeals of the revenue stands dismissed.

Order pronounced in the open court on this 02/09/2022.

Sd/-	Sd/-
(GAGAN GOYAL) **ACCOUNTANT MEMBER**	**(ABY T. VARKEY)** **JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 02/09/2022.
Vijay Pal Singh, (Sr. PS)

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

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

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आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**