IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 26 OF 2018

Pr. Commissioner of Income Tax - 8 ....Appellant

V/s.

M/s. Royal Western India Turf
Club Ltd. ...Respondent

Mr. Suresh Kumar for Appellant.
Mr. Jitendra Singh for Respondent.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 22nd DECEMBER, 2021

P.C. :

1. The appellant has proposed following question of law.

> *1. 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?*

2. The assessee is the Royal Western India Turf Club Ltd., which runs the race course at Bombay. During the assessment year 2009-10 and in the years prior thereto, the assessee used to receive entrance fee amounts from Life Members, Club and Stand Members, Service Members and Local Members. In the year in question, it was found that the assessee has credited an amount of Rs.7,51,05,500/- to the General Reserves and had not offered the same for taxation claiming it to be a capital receipt. The

Assessing Officer disallowed the same and added it to the heads of income as revenue receipts. This was impugned in Appeal before the CIT (Appeals) who in his order dated 6th July, 2012 stated as under :

> *2.0 Ground No.2 : (Addition of Rs.7,51,05,500/- on account of entrance fees treating the same as Revenue Receipts):*
> *2.1 This ground of appeal has been disposed off by the Office of the undersigned in the Appellate order for A.Y. 2005-06 wherein it has been Held that entrance fees received is a Capital Receipt.*
> *2.2 Since the facts and circumstances remain the same, following the principle of judicial consistency, this ground of appeal is allowed.*

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.***[1] 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 loopholes that the view of the Assessing Officer to treat the entrance fee as revenue receipt and not capital receipt was incorrect.

4. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and

1 263 ITR 1 (Bom.)

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.

The appeal is devoid of merits and it is dismissed with no order as to costs.

(AMIT B. BORKAR, J.) **(K.R. SHRIRAM, J.)**