

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'बी' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्री डी. करुणाकर राव, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI D. KARUNAKAR RAO, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.292/M/12
(निर्धारण वर्ष / Assessment Year: 2003-04)

Deputy Commissioner of Income Tax 5(2), R.No.571, Aayakar Bhavan, M.K.Road, Mumbai - 400020	बनाम/ Vs.	M/s. Malabar Hill Club Limited IL PALAZZO, B.K.Kher Marg, Malbar Hill, Mumbai-400006
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C.O. NO. 58/M/13(Arising I.T.A. No.292/M/12)
(निर्धारण वर्ष / Assessment Year: 2003-04)

M/s. Malabar Hill Club Limited B.K.Kher Marg, Malbar Hill, Mumbai-400006	बनाम/ Vs.	Deputy Commissioner of Income Tax 5(2), R.No.571, Aayakar Bhavan, M.K.Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACW3868M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri J.D.Mistri
Department by:	Shri Sumit Kumar

सुनवाई की तारीख / Date of Hearing: 23.11.2015
घोषणा की तारीख /Date of Pronouncement: 30.11.2015

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the appeal against the order of learned Commissioner of Income Tax (Appeals)-9, Mumbai [hereinafter referred to as the "learned CIT(A)"]

dated 14.10.2011 relevant to the A.Y. 2003-04. The assessee has also filed the Cross Objection. Therefore, these cases are being taken up together and are being decided jointly by passing the single order being the parties are same and matter of controversy is also the same which can be adjudicated conveniently.

2. The assessee is a member's club which provides catering, games, other recreational facilities, etc. to its members. The sole point which has been raised before us that whether the member fees received by the assessed are liable to be taxed or not. The assessee has received entrance fees from life members as under:

(i)	From Life Members received during the year	Rs.3,43,15,700/-
(ii)	From Life Members (Transferred from advance account)	Rs. 20,21,500/-
	Total.....	Rs.3,63,37,200/-

The Assessing Officer arrived at this conclusion that in view of the decision of the Hon'ble High Court, Mumbai, 80% of the life membership fees received is required to be treated as a income of the assessee.

3. Accordingly, an amount of Rs.2,90,69,760/- i.e. 80% of Rs.3,63,37,200/- was treated as revenue receipt and the same is brought to tax to tune of Rs.86,39,500/-. Therefore, Assessing Officer made net addition of Rs. 2,04,30,260/-(Rs.2,90,69,760 - Rs.86,39,500). Otherwise, assessee claim Rs. 3,63,37,200/- is capital in nature. Aggrieved, the assessee filed an appeal before learned CIT(A) and the learned CIT(A) rejected the plea of assessee. Therefore, the assessee has filed the present appeal before the Tribunal.

4. We have heard the arguments advanced by the learned representative of the parties and have gone through the case files carefully. The learned Departmental Representative has argued that the Cross Objection has been filed by the assessee

by 60 days delay. Therefore, the cross objection is not liable to be entertained. While, on the other hand learned representative of the assessee refuted the said contentions. The assessee filed the application for the condonation of delay and also filed an affidavit in support of their contentions. The representative on behalf of the assessee Ms. Anjana Manubhai Patel filed the affidavit stating therein that she was on leave for the period w.e.f. 10th December 2012 to 10th January 2013 for her marriage which took place on 16th December 2012 and she resumed her duties on 11th January 2013. She received the notice from the Income Tax Department with regard to appeal filed on 11th February 2013. Thereafter, the cross objection has been prepared and filed on 8th March 2013. No doubt, there is 59 days delay in filing the cross objection but the contents of affidavit speaks about the sufficient cause for filing the cross objection delayed, hence the delay of the assessee is hereby condoned in the interest of justice. The assessee in his cross objection took the plea that the reopening of assessee u/s. 148 of the Income Tax Act, 1961(in short “the Act”) is wrong against law and facts. As per record it came into the notice that the return for assessment year 2003-04 was accepted u/s 143(1) of the Act in a routine manner and no opinion was formed. Nothing was brought in to the notice that on which ground the notice u/s 148 is bad in law. Assessing Officer had a reason to believe that there was an escaped assessment. The Assessing Officer was of the view that an amount of entrance fees to the extent of 80% was to be taxable in view of the judgement of Hon’ble Bombay High Court. Therefore, we found no ground to interfere with the finding of the learned CIT(A) upholding the reopening u/s. 148 of the Act in his order in question dated 14.10.2011.

5. Now coming to the appeal filed by the revenue, it is pleaded by learned DR that the membership fees received by the assessee club is liable to be taxable in view of the judgement Hon’ble Bombay High Court but the said judgement has

not produce before the Bench. However, it is also pleaded that the 80% entrance fees received from the life member was liable to be taxable. As mentioned above in support of this contentions no material has been placed on record. However, learned counsel for the assessee submitted that this issue has now covered by the order of the CIT(A) for the A.Y.2005-06 who decided this issue in favour of the assessee relying upon the Bombay High Court judgement in the assessee's own case for the year 1963-64 and 1964-65 cited in 136 ITR 569. In the said judgement allocation of relevant receipts in the ratio of 20:80 on life membership receipts i.e. capital receipts and revenue receipts was decided by the Hon'ble Bombay High Court. The said ratio is relevant for that year under consideration and is not universally applicable for all the assessment year of the assessee. The ratio laid down by the Hon'ble Bombay High Court should be properly appreciated. After hearing both the parties we are reproducing the extract of the said para page 7 of the learned CIT(A) order as under:

The only dispute in appeal is what portion of the entrance fees received by the Appellant front persons at the time of admitting them as life members are taxable receipts. The issue has been settled by the Bombay High Court in its own case in assessment year 1963-64 and assessment year 1964-65 (136 ITR 569). Bombay High Court held that the entrance fee paid by the life members equivalent to the amount collected from ordinary members is a capital receipts not liable to tax and the balance amount is infact compounded payment in lieu of annual subscriptions and therefore are revenue receipts. . Thus it will be seen that Bombay High Court has not laid down any ratio for the purpose of splitting entrance fee between revenue and capital receipt. Therefore, the Assessing Officer was wrong in splitting the fee received from life members into capital and revenue receipts in 20 : 80 ratio. That part of the entrance fee collected from life members, which collected from ordinary members, is to be treated as capital receipts and over and above this amount is to be treated as compounded mille of annual subscriptions and therefore this part is a taxable receipts as held by Bombay High Court. Accordingly the Assessing Officer was not justified in making an addition of Rs.5. 76,000/- to the income of the Appellant on account of subscriptions transferred from the advance subscription account of

ordinary members to the life members subscription account. This ground of the appeal of the Appellant is allowed.

5.2 I have considered the facts and the submissions made by the Authorized representative. Since the facts are same and issue is identical, I do not find any reason to deviate from the stand taken by my predecessor and accordingly hold that the addition made by the Assessing Officer is not justified. The ground of appeal is, therefore allowed.

From the above, learned CIT(A) merely followed his processed order who reliance upon the judgement of Hon'ble Bombay High Court for the A.Y.1964-65(Supra). Requirement of splitting up of the entrance fee collected from life members in the ratio 20:80 is not the ratio of the cited judgement. To that extent, the decision of the learned CIT(A) is in order. Considering the above learned DR has not brought anything on record to show how the impugned order of learned CIT(A) decided on the strength of Bombay High Court judgement is not fair. We find the order of learned CIT(A) does not call for any interference. Thus, the ground raised by the revenue is dismissed.

6. In the result, the appeal of the revenue and cross objection of the assessee are hereby dismissed.

Order pronounced in the open court on 30th November, 2015.

Sd/-

Sd/-

(D.KARUNAKAR RAO)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 30th November, 2015

MP

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai