

आयकर अपीलिय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./ITA. Nos. 294 & 295/Ind/2017

निर्धारण वर्ष /Assessment Years: 2008-09 & 2009-10

Asstt.Commr.of Income tax 4(1)

Indore :: अपीलार्थी /Appellant

Vs

M/s Phoenix Leisure & Life Style Pvt.Ltd.

Indore

PAN – AAECP-9625K :: प्रत्यर्थी/Respondent

राजस्व की ओर से/Revenue by	Shri Mohd. Javed
निर्धारिती की ओर से/Assessee by	None
सुनवाई की तारीख Date of hearing	24.5.2017
उद्घोषणा की तारीख Date of pronouncement	30.5.2017

आदेश /O R D E R

PER SHRI C.M. GARG, JM

These appeals have been filed by the Revenue against different orders of the learned CIT(A)-II, Indore, both dated 31.1.2017 in First Appeal Nos. IT-213/15-16/281 & IT-212/15-16/279 the assessment years 2008-09 and 2009-10.

2. Notice of hearing was sent to the assessee by speed post at the address given in Form No. 36 but the same was returned by the postal authorities with the remark “Address Moved/Shifted”. We, therefore, have no option but to proceed to decide the appeal ex-parte. Accordingly, the learned DR was heard.

3. In both these appeals, the revenue has taken the following effective ground of appeal :-

“Whether on the facts and in the circumstances of the case, the ld. CIT(A) was justified in deleting the penalty u/s 271(1)(c) of Rs.2,50,00,000/- (A.Y. 2008-09), Rs.1,50,00,000/- based on decision of ITAT in quantum appeal which has not been accepted by the revenue and is sub judice before Hon'ble High Court.

3. Briefly stated, the assessments were made by the Assessing Officer determining the total income of the assessee u/s 143(3) of the Act. The matter went up to the Tribunal wherein the Tribunal granted relief in quantum proceedings to the assessee by deleting the entire addition made in the assessment order. In these cases, the Commissioner of Income Tax (Appeals) held as under :-

“2.1 Keeping in mind that the Hon'ble ITAT bench of Indore has given relief to the appellant on quantum and has deleted the

entire additions so made, the order imposing penalty is no longer tenable. Thus, keeping in mind the orders of Hon'ble ITAT, the order imposing penalty is hereby cancelled. These grounds of appeal are allowed.”

4. Being aggrieved with the above order of the Commissioner of Income Tax (Appeals), the revenue is in appeal before the Tribunal.

5. The learned DR submitted that the department has filed appeal against the order of the Tribunal before the Hon'ble High Court of Madhya Pradesh. Therefore, the Commissioner of Income Tax (Appeals) was not justified in deleting the penalty only on the basis of Tribunal order.

6. We have considered the submissions of the learned DR in the wake of the facts available on record. We may point out that the learned DR has not controverted this fact that in the quantum proceedings ITAT, Indore Bench, has given relief to the assessee and the entire additions on which penalty has been levied u/s 271(1)(c) of the Act has been deleted and thus we have no hesitation in holding that the Commissioner of Income Tax (Appeals) was right in cancelling the penalty as when the additions have been deleted in

toto then the order of imposing penalty u/s 271(1)(c) of the Act cannot be held as sustainable merely because the revenue has filed appeal against the order of the Tribunal before the Hon'ble High Court.

7. In the result, we hold that the penalty levied by the Assessing Officer was not sustainable in both these cases in view of the order of the Tribunal in quantum appeal and, therefore, the Commissioner of Income Tax (Appeals) was right in deleting the same. Accordingly, the sole ground of the revenue in both the appeals, being de void of merit, is dismissed.

8. In the result, both the appeals of the revenue stand dismissed.

The order has been pronounced in open Court on 30th May, 2017.

Sd/-

लेखा सदस्य
(O.P.Meena)
Accountant Member
May 30, 2017.

sd/-

न्यायिक सदस्य
(C.M. Garg)
Judicial Member

Dn/