

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, डी.मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCHES "D", MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं

श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

ITA NOs.277 to 279/Mum/2011

Assessment Years: 2004-05 to 2006-07

M/s Riya Travel & Tours (I) Pvt. Ltd. Gulab Building, Near GPO, 237 P. D. Mello Road, Mumbai-400001	बनाम/ Vs.	ACIT, Central Circle-34, Aayakar Bhavan, M.K.Road, Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
PAN. No. AAACR3178B		

निर्धारिती की ओर से / Assessee by	Shri Vijay Mehta
राजस्व की ओर से / Revenue by	Shri B.B. Rajendra Prasad CIT-DR

सुनवाई की तारीख / Date of Hearing :	30/06/2016
आदेश की तारीख /Date of Order:	01/07/2016

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

These three appeals for Assessment Years 2004-05 to 2006-07 are by the assessee challenging the respective orders of the ld. First Appellate Authority Mumbai, on the grounds stated in the respective grounds of appeal.

2. During hearing the ld. Counsel for the assessee, Shri Vijay Mehta, contended that for earlier assessment years, on identical facts/issues, the Tribunal sent the matter back to the file of the ld. Assessing Officer with certain directions (ITA No.884 to 892/Mum/2011) order dated 14/06/2013. It was explained that the ld. Assessing Officer as well as, the ld. Commissioner of Income Tax (Appeals) has not gone into the factual aspects of the matter therefore, needs fresh examination. It was also asserted that no double claim has been made by the assessee. On the other hand, the ld. CIT-DR, Shri B. B. Rajendra Prasad, did not controvert the assertion of the ld. Counsel for the assessee.

2.1. We have considered the rival submissions and perused the material available on record. In the light of the submissions from both sides in all fairness, we are reproducing hereunder the relevant portion from the aforesaid order of the Tribunal dated 14/06/2013 for ready reference and analysis:-

“These nine appeals filed by the Revenue relating to seven assessment years i.e. 2000-01 to 2006-07 involve a common issue and the same therefore have been heard together and are being

disposed of by this single composite order for the sake of convenience.

2. The assessee in the present case is an ITTA accredited company. It is engaged in the business of air ticketing for domestic and international Air Lines. The main clients of the assessee are IATA and non IATA agents, corporate clients and walk in customers. A search and seizure operation u/s 132 was conducted in the case of the assessee on 9-11-2005. During the course of the said operation, a large number of payment vouchers were found at the head office of the assessee company relating to miscellaneous refunds paid to the clients. The said vouchers were computer generated and payments reflected therein were made either in cash or by bearer cheques. In the statement recorded during the course of search, the assessee surrendered income of Rs. 9 crores on account of miscellaneous refunds claimed to be paid on account of cancellation of tickets to the extent such payments were debited to the P&L account. In the returns of income filed in response to notice u/s 153-A issued by the A.O. in pursuance of the search and seizure operation, the assessee disclosed the income on account of miscellaneous refund amounts claimed to be paid to the clients for cancellation of tickets for assessment years 2004-05, 2005-06 and 2006-07. In the assessments completed u/s 143(3) r.w.s. 153-A of the Act by orders dtd. 31-10-2007, the said disclosure made by the assessee was accepted by the A.O.

3. In the assessments simultaneously made for assessment years 2002-03 and 2003-04, the A.O. made the additions on account of bogus refunds claimed to be paid by the assessee and debited to the P&L account relying on the evidence found during the course of search and the surrender made by the assessee in the statement recorded u/s 132(4) of the Act. Against these orders dtd. 31-10-2007 passed by the A.O. u/s 143(3) r.w.s. 153 -A of the Act for assessment years 2002-03 and 2003-04, the assessee preferred appeals before the Id. CIT(A) challenging the additions made by the A.O. on account of bogus claim of miscellaneous refunds.

4. For assessment years 2000-01 and 2001-02, the A.O., however, accepted the stand of the assessee that there being no expenditure claimed on account of miscellaneous refunds paid to the clients, no addition on account of bogus refunds was required to be made and accordingly completed the assessments u/s 143(3) r.w.s. 153A of the Act vide orders dtd. 31-12-2007 for assessment years 2000-01 and 2001-02 without making any addition on account of bogus claim of refunds. The orders passed by the A.O. for assessment years 2000-01 and 2001-02 were set aside by the Id. CIT vide orders dtd. 31-3-2009

passed u/s 263 of the Act with a direction to examine the issue relating to the assessee's claim for miscellaneous refunds in detail as per observations made by him in the said order. Accordingly, fresh assessments were made by the A.O. u/s 143(3) r.w.s. 263 for assessment years 2000-01 and 2001-02 vide orders dtd. 10-12-2009 making additions on account of bogus claim of miscellaneous refunds made by the assessee. Against these orders passed by the A.O. u/s 143(3) r.w.s. 263 of the Act for assessment years 2000-01 and 2001-02, the assessee preferred appeals before the ld. CIT(A).

5. Meanwhile, it was noticed by the A.O. that the amounts claimed to be paid by the assessee on account of miscellaneous refunds to the clients from its bank account with Fort Branch and Andheri Branch during the previous year relevant to assessment years 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07 were not taken into consideration for making additions in the assessments completed u/s 143(3) r.w.s. 153-A of the Act vide orders dtd. 31-12-2007. He therefore reopened the assessments for all these five years and in the reassessments completed u/s 143(3) r.w.s. 147 of the Act vide orders dtd. 10-12-2009, additions on account of such amounts which had not been considered in the original assessments were made by the A.O. Against these orders passed by the A.O. u/s 143(3) r.w.s. 147 vide orders dtd. 10-12-2009 for assessment years 2002-03 to 2006-07, the assessee filed appeals before the ld. CIT(A).

6. As discussed above, in all nine appeals involving seven assessment years thus were filed by the assessee before the ld. CIT(A). As regards the appeals filed by the assessee for assessment years 2000-01 and 2001-02 against the orders passed by the A.O. u/s 143(3) r.w.s. 263 of the Act, the ld. CIT(A) found that the orders passed by the ld. CIT u/s 263 were also challenged by the assessee in the appeals filed before the Tribunal and the Tribunal vide its common order dtd. 30th Sept. 2010 passed in ITA No. 3554 and/Mum/2009 had already set aside the said orders passed by the ld. CIT u/s 263 of the Act restoring the orders passed by the A.O. for assessment years 2000-01 and 2001-02 on 31-12-2007 u/s 143(3) r.w.s. 153A of the Act. As a result of the said order passed by the Tribunal setting aside the order passed by the ld. CIT u/s 263 of the Act, the orders passed by the A.O. u/s 143(3) r.w.s. 263 of the Act had now become nonest and accordingly the appeals filed by the assessee against the said orders were allowed by the ld. CIT(A) vide his common order dtd. 9-11-2010 holding that the additions made to the total income of the assessee in assessment years 2000-01 and 2001-02 on account of miscellaneous refunds were not sustainable.

7. It was also noticed by the ld. CIT(A) that the issue relating to addition made on account of bogus claim of miscellaneous refunds was considered and decided by the Tribunal in its order dtd. 30th September 2010 (*supra*) passed for assessment years 2000-01 and 2001-02 holding that the addition made on account of miscellaneous refunds on cancellation of tickets was not sustainable even on merits. Accordingly, following the said decision of the Tribunal in assessee's case for assessment years 2000-01 and 2001-02, the ld. CIT(A) held that similar additions made by the A.O. to the total income of the assessee for assessment years 2002-03 and 2003-04 vide orders dtd. 31-12-2007 passed u/s 143(3) r.w.s. 153A were not sustainable and the same were deleted by him vide his common order dtd. 9-11-2010. He also deleted the similar addition made by the A.O. to the total income of the assessee vide orders dtd. 10-12-2009 passed u/s 143(3) r.w.s. 147 of the Act for assessment years 2002-03 to 2006-07 vide his common orders dtd. 9-11-2010. Aggrieved by these three orders passed by the ld. CIT(A), the Revenue has preferred these appeals before the Tribunal.

8. We have heard the arguments of both the sides and also perused the relevant material placed on record. In so far as the Revenue's appeals being ITA No. 884 & 885/Mum/2011 are concerned, it is observed that the same are emanating from the orders passed by the A.O. u/s 143(3) r.w.s. 263 of the Act for assessment years 2000-01 & 2001-02. As per the order of the Tribunal dtd. 30-9-2010 (*supra*) relied upon by the ld. CIT(A), the orders passed by the ld. CIT u/s 263 of the Act for assessment years 2000-01 & 2001-02 were set aside by the Tribunal and consequently the orders passed by the A.O. u/s 143(3) r.w.s. 263 of the Act for assessment years 2000-01 & 2001-02 had become nonest. The ld. CIT(A), in our opinion, therefore was fully justified in allowing the appeals of the assessee preferred against the said order. The impugned orders of the ld. CIT(A) allowing the said appeals of the assessee for assessment years 2000-01 & 2001-02 are therefore upheld dismissing the appeals of the Revenue being ITA No. 884 & 885/Mum/2011.

9. As regards the other 7 appeals of the Revenue, it is observed that the common issue relating to the addition made on account of miscellaneous refunds on cancellation of tickets is involved therein on merit. On this issue, the ld. CIT(A) has allowed relief to the assessee by deleting the said addition relying on the order of the Tribunal dated 30-09-2010 (*supra*) holding that while disposing of the appeals of the assessee filed against the orders passed by the ld. CIT u/s 263 of the Act for assessment years 2000-01 & 2001-02, a similar issue was considered and decided by the Tribunal even on

merit. In the said order, it was held by the Tribunal that the assessee having not made any claim of expenditure on account of miscellaneous refunds claimed to be paid on account of cancellation of tickets by debiting the amounts of such refund to the P&L account, the said amounts, even if the refund was treated as bogus, could not be added to the income of the assessee. Although, the ld. CIT(A) took note of this decision of the Tribunal given on merit on a similar issue, he appears to have overlooked the fact that there was no finding given by the A.O. in the relevant assessment orders to the effect that there was no expenditure claimed by the assessee on account of miscellaneous refunds claimed to be made on cancellation of tickets by debiting the P&L account. It is noted that even the ld. CIT(A) has also not given any specific finding on this aspect of the matter in the impugned orders which, in our opinion, is necessary for giving relief to the assessee on merit by relying on the order of the Tribunal dated 30-09-2010 (supra). We, therefore, restore this issue to the file of the A.O. for the limited purpose of verifying the stand of the assessee of having not claimed any expenditure on account of miscellaneous refunds paid on cancellation of tickets from the relevant record and allow the relief to the assessee on this issue following the order of the Tribunal dated 30-09-2010 depending upon the outcome of the verification.

10. In the result, appeals of the Revenue being ITA No. 884 & 885/Mum/2011 are dismissed whereas the other seven appeals of the Revenue are treated as allowed for statistical purpose as indicated above.

Order pronounced in the open court on 14.06.2013”

We find that on identical fact, an elaborate discussion has been made by the Tribunal after examining the facts. In the present appeals also, identical facts/issues are involved. It is also noted that the factual matrix has not been gone into and more specifically with respect to the expenditure claimed by the assessee, thus, the Ld. Assessing Officer is directed to examine the facts of the case, considering the aforesaid order of the Tribunal dated 14/06/2013. The ld. Assessing Officer is also to verify the genuineness of the claim of the assessee and after providing due opportunity of being heard to the

assessee, decide afresh in accordance with law. Thus, these appeals of the assessee are allowed for statistical purposes only.

Finally, all the appeals of the assessee are allowed for statistical purposes only.

This order was pronounced in the open court in the presence of Ld. representative from both sides at the conclusion of the hearing on 30/06/2016.

Sd/-

(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 01/07/2016

Shekhar, P.S. नि.स.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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