

**आयकर अपीलिय अधिकरण “एल” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “L” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./I.T.A. Nos.2632 & 2633/Mum/2016

(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

Dy. CIT(IT)-4(2)(2), Scindia House, Ballard Pier, N.M. Road, Mumbai-400 038	<b>बनाम/ Vs.</b>	M/s. Star Cruise Management Limited C/o. Kanodia Chauhan & Co., CAs., G- 15, Everest, Tardeo Road, Mumbai-400 034
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAHCS 0352 F		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri M. V. Rajguru
प्रत्यर्थी की ओर से/Respondent by	:	Shri Vipul Joshi
सुनवाई की तारीख / Date of Hearing	:	19.04.2018
घोषणा की तारीख / Date of Pronouncement	:	02.05.2018

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

These are appeals by the Revenue against the respective orders of the Id. Commissioner of Income Tax (Appeals), pertaining to the assessment years 2010-11 and 2011-12. Since the issues are common and connected and the appeals were heard together these have been disposed of by this common order.

2. The common grounds of appeal read as under:

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in law in holding that the gross receipt received by the SGML as

- principal from the agents is not chargeable to tax u/s. 5(2)(a) of the Income Tax Act, 1961?"
2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in holding that no income accrues or arises to the assessee in India regarding the business of sale of tickets through the selling agents?"
3. The Appellant prays that the order of the CIT(A) be set aside on the above ground(s) and the draft order of the Assessing Officer restored.
3. At the outset, in this case, the Id. Counsel of the assessee submitted that the issue is covered in favour of the assessee by a series of decisions of the tribunal in the assessee's own case.
4. Per contra, the Id. Departmental Representative did not dispute this proposition.
5. The brief facts of the case on this issue are as under:
- M/s. Star Cruise Management Limited (SCML) or the assessee is a foreign company registered in Isles of Man. SCML has appointed Star Cruise (India) Travel Services Pvt. Ltd. (SCITSPL), an Indian company as canvassers for its cruises operated outside India. The Indian company renders various services to the company. The nature of agreement is described as "appointment of SCITSPL as the General Sales Agent " in India mainly for collection of monies in India besides providing certain sales and marketing services in connection with the operation of the Vessels. The duties and obligations of the Indian party as per the agreement are:
- i. To act as Canvasser in India for Cruise Packages, shores excursions promoted by SCML in respect of vessels owned, chartered, amanged and/or operated by Star Cruises Group of Companies from time to time.
  - ii. To remit monies received from PSA's for cruise packages, shore excursions promoted by SCML in India.

- iii. To keep SCML advised on all relevant laws and regulations and operating criteria relating to the sale of tickets with particular reference to consumer and contract legislations.
  - iv. To treat as confidential all books, documents and information received from SCML and to return the same upon demand; and
  - v. To keep and render to SCML fair and accurate accounts of any dealings of all monies received by SCITSPL in relation to sale, bookings & confirmation for and on behalf of SCML and to pay over to SCML, all monies so received without any deduction except as may be agreed upon or authorised between SCML and SCITSPL.
6. The assessing officer has dubbed the above arrangement as being in the nature of a business connection between the two parties as contemplated under section 9(1) (i) of the Income Tax Act and has estimated total profit of the non-resident from this business connection @ 5% of the turnover of the non-resident from India. For arriving at his decision, the AO has reproduced the duties and obligations of the Indian counterpart i.e. SCITSPL as per the agreement and has relied on the Supreme Court decision in the case of R D Aggarwal & Co. (56 ITR 20) and Anglo-French Textile Co Ltd (23 ITR 101).
7. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) decided the issue in favour of the assessee by placing reliance upon a series of ITAT decision in the assessee's own case.
8. Against this order, the assessee is in appeal before us.
9. We have heard both the counsel and perused the records. We find that this tribunal in assessee's own case has decided the issue in favour of the assessee. The references to these decisions are as under:

1.	ITA No.4973/M/2005 ITA No.6497/M/2006
2	ITA No.5713/M/2007
3	ITA No.2521/M/2008
4	ITA No.6112/M/2008
5	ITA No.3805/M/2010
6	ITA No.7759/M/2010
7	ITA No.7486/M/2011
8	ITA No.1809, 1810 & 1811/M/2013 MA No. 2 & 3/M/2016

10. The Id. Counsel of the assessee submitted that in the hands of the payer, i.e., Star Cruise (India) Travel Services Pvt. Ltd. It has been held that the said company was not responsible for tax at source as the income of the assessee M/s.SCML cannot be held as taxable in India to the extent of amount of sale of the cruise tickets in India. In this regard, the Id. Counsel of the assessee referred to the order of the tribunal in the case of M/s. Star Cruise (India) Travel Services P. Ltd. in ITA No. 3802/Mum/2010 for assessment year 2010-11 and ITA No.7487/Mum/2011 for assessment year 2011-12, in which the tribunal has similarly held that no income has accrued or arisen in India in respect of booking or sale of tickets for tour packages of the cruise in India.

11. Thus from the above it is amply evident that this tribunal has consistently decided the issue in favour of the assessee. No case has been made out that there are any distinguishing features in the present year or that the earlier decision of the tribunal has been reversed by the Hon'ble jurisdictional High Court. Hence, in accordance with the aforesaid discussion and precedent, we do not find any infirmity in the order of the Id. Commissioner of Income Tax (Appeals). Accordingly, we uphold the same.

12. In the result, these appeals by the Revenue stands dismissed.

*Order pronounced in the open court on 02.05.2018*

Sd/-  
(Ravish Sood)

न्यायिक सदस्य / Judicial Member

Sd/-  
(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :02.05.2018

व.नि.स./Roshani, 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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

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

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