

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “B” BENCH

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

**ITA. No: 254/AHD/2018
(Assessment Year: 2014-15)**

The Commissioner of Income Tax, Ahmedabad	Assistant of Income Circle-2(1)(1), Ahmedabad	V/S	Gulmohar greens Gold & Country club Limited B- 204, Shapath IV, Sarkhej, Gandhinagar Highway, Ahmedabad-380051
(Appellant)			(Respondent)

PAN: AACCG 4253G

**Appellant by : Shri Lalit P. Jain, Sr. D.R.
Respondent by : Shri Jyotish M. Shah, A.R.**

(आदेश)/ORDER

Date of hearing : 02 -05-2019
Date of Pronouncement : 07 -05-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal by filed the Assessee is directed against the order of the Ld. CIT(A)-2, Ahmedabad dated 05.10.2017 pertaining to A.Y. 2014-15 and following grounds have been taken:

1. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs 11,59,75,000/- made by the Assessing Officer in respect of life membership and entrance fees received by the assessee wrongly holding that Principle of Mutuality was applicable to the assessee company .

1.1 The Ld CIT(A) has failed to appreciate that the assessee company was not a mutual society . Reference in this regard is made to the Hon'ble Apex Court Judgement in the case of Kumbakonam Mutual Benefit Fund Ltd vs CIT .

1.2 The Ld CIT(A) failed to appreciate that in this case, no interest has been paid to the members and therefore the decision of Apex Court in the case of Sahkar Karkhana Ld Vs CIT [2004] 139 Taxman 434(SC) is clearly distinguished.

1.3 The Ld. CIT(A) has failed to appreciate that in this case the principal amount is returned back to the assessee without interest after 25 years. Thus the present value of the future liability is far less (which can be calculated by arithmetic formula) and, therefore, the difference between the amount actually collected and the present value of the future liability should be subjected to tax in the year of receipt.

1.4 The Ld CIT(A) has failed to appreciate that the assessee charges separate fees/charges for all the facilities being utilized by the member.

1.5 Without prejudice to the above, the Ld CIT(A) should have held that such difference (as noted at Point No 1.3) should be broken up in 25 years and made taxable for next 25 years as has been held by the Gujarat High Court in the case of CIT Vs Unique Mercantile Services Ltd [2015] 56 taxmann.com 429 (Gujarat).

2. Facts of the case are as emanated from the assessment order:

3.1 During the assessment proceedings, on verification of the return of income and other details furnished, it is noticed that the assessee has been carrying on the business of club activities in the name and style of Gulmoliir Greens - Golf & Country Club Ltd. The main object of the assessee company are "to establish, manage, run, maintain, hire, buy, sell or carry on the business, subject to necessary approval of appropriate authorities as proprietors of Gold Club, Golfing academy. Golf diving range, clubs, club houses, green houses. garden, senior citizen centers, restaurants, hotels, resorts, cottages, villas, having facilities such as refreshments, tea rooms, cafes, holiday camps, recreation and entertainment centers, amusement parks, tourist centers, banquet hall, swimming pool, Turkish bath, sona bath, Jacuzzi bath, toddler pool, boating, ice skating, party plots, beauty parlor, card room, T. V. Rooms, libraries, reading rooms, theaters, florist,

travel counter, entertainment programs, competition programs. talent search, studios, canteens, milk and snack bars, tavern, beer house, aerobics, meditation centres, jogging parks, auditorium, open air theatres, business centres, meeting halls, conference rooms, lodging house keepers, subject to license/permission of the State Governments, wine beer and merchants, brewers, maltsters, distillers, importers created minerals and artificial water and other drinks, novelty items, bakery and confectionery items and as caterers and contractors in all their respective branches subject to law".

3.2 On scrutiny of the accounts, it is noticed that the assessee has enrolled members on payment of security deposits as entrance fee. The said security deposit (entrance fee) as stated by the assessee is refundable to the members - later 25 years on which no interest will be paid to them. It is also noticed that whatever amount has been collected as security deposits from the members as entrance fees has been utilized for construction and providing other facilities at the club. The assessee has not kept apart the security deposits obtained from the members but has appropriated the same for construction and the other amenities provided in the club. It is also noticed that the deposits collected from the members has not been shown under the head liabilities in the accounts of the assessee. Considering all the above facts and circumstances of the case, in the previous assessment year addition on account of income from, members" deposits have been made by the revenue:

3.3 During the course of assessment proceedings, vide notice u/s. 142(1) of the Act, the assessee was asked to furnish explanation as to why similar additions/disallowances should not be made as were made by the revenue in preceding assessment year. In response, the A.R. of the assessee filed a reply on 21.07.2016 as under:

3.4 The reply of the assessee perused carefully but the same is not found acceptable as it does not contain any merits. In this regard, it is relevant to mention that the assessee's contention that the First Appellate Authority i.e. Id.CIT (A) has not sustained the view taken by Assessing Officer is not found acceptable as against the observation of the Id. CIT (A), an appeal has been filed by the Revenue before the Hon'ble ITAT, Ahmedabad which is still pending,

It is also relevant to mention here that this issue has been elaborately discussed in the assessment order for A.Y.2008-09 passed on 24.12.2010. It is equally relevant to mention here that in the assessment year 2008-09 following a specific query (reproduced below) was put forth before the assessee.

3.5 In response to the above show cause notice, the assessee approached the Addl. Commissioner of Income-tax, Range-4, Ahmedabad vide application u/s. 144A of the Act dated 9-12-2010 and the Addl. Commissioner of Income-tax, Range-4, Ahmedabad issued directions vide letter No. Addl. CTTVRange-4/144A/2010-11 dated 22-12-2010 which is reproduced hereunder:

3.6 It is equally relevant to mention that following the above specific directions of the Addl. Commissioner of Income-tax, Range-4, Ahmedabad as given vide letter No. Addl. C1T/R-4/ 144A/2010-1 1 dated 22-12-2010, the A.O. in that assessment year, considered 60% of the security deposits received by the assessee during that year as income and accordingly in that assessment year A.O. treated the income @ 60% of the members' security deposit at Rs. 1.87.66.800/-.

3.7 Since, the issue for the year under consideration is identical, though the issue under consideration has been adjudicated by the Hon'ble IIAI for the assessment year 2008-09, the issue has not yet reached the finality, and as similar reply has been given by the assessee with regard to the members' security deposit, applying the principle of consistency in the view taken by the Department, 60% of the security deposits received by the

Since, the issue for the year under consideration is identical, though the issue under consideration has been adjudicated by the Hon'ble ITAT for the assessment year 2008-09, the issue has not yet reached the finality, and as similar reply has been given by the assessee with regard to the members' security deposit, applying the principle of consistency in the view taken by the Department, 60% of the security deposits received by the assessee during the year under consideration is assessed as income on account from members' security deposits for the year under assessment. Since, the total security

deposits collected by the assessee during the year comes to Rs.1 1,59,75,000/- and 60% of such deposits works out to Rs.6,95,85,000/-, an addition on account of income from members" security deposits is added to the total income of the assessee."

3. Against the said addition, assessee preferred first statutory appeal before the Id. CIT(A) who partly allowed the appeal of the assessee with following direction:

3.3. Decision:

I have carefully considered the facts of the case, assessment order and submission of the appellant. The AO has made the addition of Rs.6,95,86,000/- as income being 60% of the Members Security Deposit of Rs.11,59.75,000/-. It has been noticed that this amount of security deposit was refundable to the members after 25 years. However, the AO made the addition as per the principle of consistency as in the preceding year also the addition on the similar lines have been made. The appellant has made the detailed written submission on the issue which has been reproduced in the preceding paras of this order. It has been noticed that in appellant's own case for A.Y. 2008-09 on the Revenue's Appeal the Hon'ble ITAT, Ahmedabad in appellate order vide ITA No.2337/Ahd/2011 and 2054/Ahd/2011 dtd. 30.11.2015, has deleted the addition with the decision as per para-5 of its order which reads as under:-

"5. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The Revenue has not disputed that the security deposits were refundable to the Members. It is also not in dispute that in some of the cases the assessee-club has refunded the amount. Under these facts, we are unable to accept the finding of the AO that the amount would be subjected to income-tax and would partake the income of the assessee-club. We are of the considered view that every receipt cannot be termed as income unless it satisfies the requirement of law. In the present case, the assessee-club has received refundable non interest bearing security deposit would remain liability for the assessee club. Member by giving security deposit entitles himself for the concessional rate services provided by the assessee club. Therefore, looking to the totality of the facts of the case and in view of the judgment of Hon'ble Supreme Court in the case of Siddeshwar Sahakari Sakhar Karkhana Ltd. reported at 270 ITR 1 (SC) and also the

judgment of Hon'ble Jurisdictional High Court in the case of Unique Mercantile Services Pvt. Ltd. in Tax Appeal Nos. 1471 to 1478 of 2005. wherein the Hon'ble High Court has confirmed the view of the Tribunal holding that the assessee would entitle for spreading over the non - refundable fee on accrual basis, undisputedly the one time security deposit is refundable. The Hon'ble Supreme Court in the case of Sidheshwar Sahakari Sakhar Karkhna Ltd. (supra) has held that these deposits are akin to transaction of loan. They are clearly liable to excluded from taxable income. Therefore, respectfully following the judgment of the Hon'ble Apex Court in the case of Siddheshwar Sahakari Sakhar Karkhana Ltd., we are of the considered view that the security deposits as received by the assessee-club cannot be subjected to tax. Accordingly, we find no merit in this ground of the Revenue's appeal, same is rejected."

3.4. Subsequently, the Hon'ble ITAT in appellants own case for A.Y. 2011-12 and 2012-13 has also deleted such additions made by the AO. For ready reference in the appeal for A.Y. 2011-12 in ITA No.3301/And/2015 and 54/Ahd/2016 dtd. 19.2.2016, the Hon'ble ITAT has decided the issue in favour of the appellant with the observation which reads as under:-

"4. I have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below as well as the decision relied upon by the Id. counsel for the assessee. The Tribunal, under the identical facts and circumstances of the case, ha held that the security deposit collected from its members which is refundable and does not partake the character of income. The relevant findings of the Tribunal contained in para-5 in assessee's own case passed for A. Y. 2008-09 (supra) reads as follows:- . .

"5. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The revenue has not disputed that the security deposits were refundable to members. It is also not in dispute that in some of the cases the assessee-club has refunded the amount. Under these facts, we are unable to accept the finding of the AO that the amount would be subjected to income tax and would partake the income of the assessee club. We are of the considered view that every receipt cannot be termed as income unless it is satisfies the requirement of law. In the present case, the assessee-club had received refundable non - interest bearing security deposit would

remain liability for the assessee-club. Member by giving security deposit entitles himself for the concessional rate services provided by the assessee club. Therefore, looking to the totality of the facts of the case and in view of the judgment of the Hon'ble Supreme Court in the case of Siddhesh\sar Sahakari Sakhar Karkhana Ltd. reported at 270 ITR 1 (SC) and also the judgment of Hon'ble Jurisdictional High Court in the case of Unique Mercantile Services Pvt. Ltd. in Tax Appeal Nos. 1471 to 1478 of 2005. wherein the Hon'ble High Court has confirmed the view of the Tribunal holding that the assessee would entitle for spreading over the non refundable fee on accrual basis, undisputedly the one time security deposit is refundable. The Hon'ble Supreme Court in the case of Siddheshwar Sahakari Sakhar Karkhana Ltd. (supra) has held that these deposits arc akin to transaction of loan. They are clearly liable to be excluded from taxable income. Therefore, respectfully following the judgment of the Hon'ble Apex Court in the case of Siddheshwar Sahakari Sakhar Karkhana Ltd., we are of the considered view that the security deposits as received by the assessee-club cannot be subjected to tax. Accordingly, we find no merit in this ground of the Revenue's appeal, same is rejected."

4.1. In view of the aforesaid decision of the Coordinate Bench, 1 hold that the refundable security deposit collected is not liable to be taxed income of the assessee. It is ordered accordingly. As a result, ground Nos. 1 to 3 raised in the assessee's appeal are allowed."

4. We have gone through the impugned order and heard both the parties. In this case, A.O. has made the addition of Rs.6,95,86,000/- as income being 60% of the Members Security Deposit was refundable to the members after 25 years. But ld. A.O. made the addition as per the principle consistency as in the earlier year, similar additions were made.
5. At the outset, ld. A.R. Shri Jyotish M. Shah cited an order of Co-ordinate Bench wherein matter was decided in favour of assessee for assessment year 2013-14 with following facts and directions:

3. Brief facts in the regard are that assessee-company is engaged in business of club activities. It has filed its return of income on 28.9.2013 declaring total loss at Rs.(-)71,71,259/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. During the assessment proceedings, on verification of record it was noticed by the AO that the assessee has enrolled members on payment of security deposits as entrance fee, which according to the assessee was refundable to the members after 25 years on which no interest would be paid to them. This amount of deposits was not kept as security deposits separately in the accounts rather it was utilized for construction and other amenities to be provided to the club members. To the specific query by the AO, the assessee inter alia replied that as per the bye-laws of the club, it was refundable amounts received from the members as security deposits after 25 years from the date of enrolment of membership with the club. Such security deposits were shown as long term liability in the balance sheet, and therefore it cannot be treated as income of the club. The Id.AO, however, was not satisfied with the reply of the assessee, denied the claim of the assessee, but restricted the disallowance to the extent of 60% of the security deposits received by the assessee during the year under consideration, and accordingly treated the a sum of Rs.3,12,30,000/- as revenue income. The assessee was not satisfied with the assessment order, and went in appeal before the First Appellate Authority, who after considering the submissions of the assessee and following the decision of ITAT, Ahmedabad Bench in assessee's own case on identical issue for the assessment years 2008-09, 2011-12 and 2012-13, the addition made by the AO was deleted and the appeal of the assessee was allowed. Aggrieved by impugned order of the Id.CIT(A), the Revenue is now before the Tribunal challenging deletion of addition of Rs.3,12,30,000/-.

4. Before us, the Id.DR supported order of the AO. He further submitted that security deposit received by the assessee is nothing but membership fees with an intention to minimize income and avoid payment of tax. Though, the assessee has following mercantile system of account, the so-called security deposits has not been shown as liability in the balance sheet, and whatever amounts received from the new members have been utilized for construction work. The Id.AO considered all aspects of the issue and rightly concluded that money received from the new members is to be treated as membership fees and treated accordingly as income of the assessee.

5. The Id.counsel for the assessee, on the other hand, the Id.CIT(A) has discussed the issue in detail and allowed the claim of the assessee. The Id.CIT(A) while allowing the claim of the assessee also relied upon orders of the Tribunal in the assessee's own case for the assessment years 2008-09, 2011-12 and 2012-13 vide which on similar issue the Tribunal has held that deposits collected from its members are refundable and does not bear character of income, and therefore

not liable to be taxed. This order of the Tribunal was further challenged by the Revenue before the Hon'ble High Court, and the Hon'ble Court by judgment dated 16.11.2016 upheld the order of the Tribunal and dismissed the appeal of the Revenue. He further submitted that in the assessment year 2010-11 also similar issue travelled to the Tribunal and the Tribunal in ITA No.2046/Ahd/2014 allowed the claim of the assessee. Therefore, this issue has become final and binding, and the same should be followed in the present case also.

6. We have considered rival submissions and gone through the record and also orders of the Tribunal passed in the earlier years also. We find that on this issue we do not require any extra efforts to examine the case of the assessee in order to come to the conclusion that money received from the members are in the nature of loan, which ITA No.51/Ahd/2017 are to be refunded to the members back after 25 years, and not in the nature of income as observed by the AO. The Tribunal in the assessee's own case, for earlier years on similar issue has allowed claim of the assessee, which was affirmed by the Hon'ble jurisdictional High Court in further appeal. Therefore, this issue is almost settled.

6. In parity with the aforesaid ITAT order wherein in similar facts and circumstances of the case, Co-ordinate Bench has dismissed the appeal for assessment year 2013-14. Therefore, we are not inclined to entertain this appeal and we do not find any error in the order passed by the ld. CIT(A).

7. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in Open Court on	07- 05- 2019
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Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 07/05/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.