

आयकर अपीलिय अधिकरण "C" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री शमीम याहया, लेखा सदस्य एवं श्री अमरजित सिंह, न्यायिक सदस्य के समक्ष।

BEFORE SRI SHAMIM YAHYA, AM AND SRI AMARJIT SINGH, JM

आयकर अपील सं./ ITA No. 522/Mum/2018

(निर्धारण वर्ष / Assessment Year 2012-13)

आयकर अपील सं./ ITA No. 523/Mum/2018

(निर्धारण वर्ष / Assessment Year 2014-15)

The Asst. Commissioner of Income Tax, Circle 7(3)(1), Mumbai	बनाम/ Vs.	M/s Pancard Clubs Ltd 111-113, Kalyandas Udyog Bhavan, Near Century Bhavan, Prabhadevi, Mumbai-400 025
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./ PAN No. AAACP9093R		

अपीलार्थी की ओर से / Appellant by	:	Shri V. Sreekar, DR
प्रत्यर्थी की ओर से / Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	09.01.2020
घोषणा की तारीख / Date of pronouncement:	02.03.2020

आदेश / ORDER

शमीम याहया, लेखा सदस्य/

PER SHAMIM YAHYA, AM:

These are appeals by the Revenue directed against respective orders of learned CIT(A) pertaining to Assessment Years 2012-13 & 2014-15 respectively.

2. The common grounds of appeals read as under: -



"For Assessment Year 2012-13

4. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in holding that the receipt on account of advance sale of room nights is not a revenue receipt without appreciating the fact that the principle business of assessee is to provide accommodation and other facilities to tourist members and assessee is debiting all the expenses relatable to these receipts.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the provision for Holiday Scheme Surrender Value' is an allowable expenditure.

For Assessment Year 2014-15

1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in holding that the receipt on account of advance sale of room nights is not a revenue receipt without appreciating the fact that the principle business of assessee is to provide accommodation and other facilities to tourist members



and assessee is debiting all the expenses relatable to these receipts.

2. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in holding that the provision for Holiday Scheme Surrender Value' is an allowable expenditure."

3. We have heard the learned Departmental Representative. None appeared on behalf of the assessee despite notice being served. The learned Departmental Representative fairly agreed that the issue is covered in favour of the assessee by the decision of ITAT and Hon'ble High court in assessee's own case. We may gainfully refer to the order of the ITAT for Assessment Year 2011-12 by the order dated 01.07.2017 as under: -

"5. We find that the dispute on the treatment of advances against sale of room nights and the claim of pro-rata deduction for the difference in the amount paid and the surrender value of the room nights, came up for the first time in assessment year 2004-05 by way of initiation of proceedings under section 263 of the Act by the Commissioner. The Tribunal vide its order dated 16/03/2011(supra) dealt with the merits of the stand of the Commissioner, which is in consonance with what the Assessing



Officer done in the impugned order and the Tribunal disagreed with the stand of the Revenue. Thereafter, the Hon'ble Bombay High Court in its order dated 09/05/2014(supra) upheld the proposition that having regard to the terms and conditions of the holiday scheme, no income accrues to the assessee at the time of receipt of the advances. The Hon'ble Bombay High Court took note of the factual finding arrived by the Tribunal that the scheme obligated the assessee to refund not only the advance payment, but also the surrender value. Notably, for assessment years 2004-05,2005-06,2007-08 and 2009-10 also, the Hon'ble High Court in ITA No.1515,1516,1594 and 1678 of 2014 dated 17/02/2017 has approved the decision of the Tribunal. Be that as it may, it clearly implies that the stand taken by the Assessing Officer in the impugned assessment order is contrary to the judgments of the Hon'ble Bombay High Court dated 09/05/2015(supra) and 17/02/2017(supra) in the assessee's own case and, therefore, we find no error on



the part of the CIT(A) in deleting the addition."

4. We note that facts in the present assessment years are identical. No distinguishing feature has brought to our notice. Hence, respectfully following the precedent, we recall the orders of learned CIT(A). It is also noted that Assessing Officer was also aware of these facts. He has mentioned that disallowances are being made to keep the matter alive as it is pending at higher forum.

5. In the result, appeals of the Revenue are dismissed.

Order pronounced in the open court on 02.03.2020.

Sd/-

(अमरजित सिंह / AMARJIT SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 02.03.2020

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

Sd/-

(शमीम याहया / SHAMIM YAHYA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

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 (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai