IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA Nos.407 & 8003/Del/2019
(Assessment Years : 2013-14 & 2015-16)

SGDC India Pvt. Ltd. C-8/1-A, Vasant Vihar New Delhi – 110 057 **PAN No. AAJCS 2432 C**	Vs.	DCIT Circle – 23(2) New Delhi
(APPELLANT)		**(RESPONDENT)**

Assessee by	Shri R. S. Singhavi, Adv. Shri Satya Jeet Goel, Adv. Shri Rajat Garg, Adv.
Revenue by	Shri Yogesh Nair, Sr. D.R.

Date of hearing:	15.06.2023
Date of Pronouncement:	26.06.2023

ORDER

PER ANUBHAV SHARMA, JM :

The appellant has come in appeals against the order dated 28.12.2018 & 04.02.2019 passed by the Learned Commissioner of Income Tax (Appeals)-31 & 8, New Delhi [in short 'Ld. CIT(A)'] u/s 250 of the Income Tax Act, 1961 (hereinafter referred as "the Act") being Appeal Nos. 276/17-18 & 10355/17-18, pertaining to Assessment Years 2013-14 & 2015-16.

2. The facts of the case are that as per note filed in the financial statement, the assessee has shown interest free Security Deposit of Rs.12,92,50,000/- i.e. Rs.39,00,000/- was received during the F.Y. 2012-13 and Rs.11,50,000/- in F.Y. 2014-15 which were sought to be

explained by Learned AO and it was explained on behalf of the assessee that it is entered into an agreement with M/s. Silver Line Holdings Pvt. Ltd. (SHL) in pursuant to which it was entrusted responsibility to operate, manage and administer the Golf Course at Tarudhan, Gurgaon. It was submitted that refundable interest free securities deposit was received from M/s. Silver Line Holding Pvt. Ltd. which is shown as the liability in the finances. However, Learned AO was not satisfied and made following the observations:

> *"5. The reply of the assessee together with the facts of the case has been considered and the contention of the assessee is not found tenable due to the following reasons:*
>
> *(i) The contention of the assessee that the there is specific agreement with Silverline Holding Pvt. Ltd. and the amount is refundable as per that contact. Further, there is no privity of contract between the assessee company and the Villa Owners, but have been engaged by M/s Silver Line Holding Pvt. Ltd. is not true due to the following reasons:*
>
> *(a) The assessee as stated above that the deposits received from M/s Silver Line Holding Pvt. pursuant to the agreement between the assessee and M/s Silver Line Holding Pvt. However, this fact not supported by the financial statement of the M/s Silver Line Holding Pvt. and the assessee itself. Nowhere in the balance sheet of the M/s Silver Line Holding Pvt. mentioned that this amount has been given to the assessee as refundable. On the other side also this fact is not supported by the balance sheet of the assessee. In the balance sheet of the assessee it is shown as interest free security deposits received in schedule 5 and no where it is mentioned that this amount has been received from M/s Silver Line Holding Pvt.*
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> *(b) The assessee vide its reply dated 17.02.2016 submitted that the assessee company in the normal course of business of maintaining and operating the golf course at Tarudhan receives*

Security Deposit from members being Villa Owners through Silverline Holdings Pvt. Ltd. (the developer company. During the assessment proceedings when the assessee was asked to provide the copy of agreement if any with the members of villa owner. The assessee instead of furnishing copy of agreement with the Buyers of Villa owners vide submission dated 22.03.2016 submitted that the security deposit received by the assessee is refundable to M/s Silver Line Holding Pvt. Ltd. Further, there is no privity of contract between the assessee company and the Villa Owners, but have been engaged by M/s Silver Line Holding Pvt. Ltd. This statement of the assessee is contradictory with the statement given vide point no. 4 submission dated 17.02.2016 wherein the assessee itself stated that the security deposited receipts from members being villa owners through M/s Silver Line Holding Pvt. Ltd.

(c) The assessee during the course of assessment proceedings in the case of silver line holding furnished the copy of tri-party buyers agreement wherein the company is a party in which it is specifically mentioned that the security deposits will be non refundable and M/s Silver Line Holding Pvt. Ltd. after collecting the same will transfer to the assessee. Accordingly M/s Silver Line Holding Pvt. Ltd. receives the security deposits from customer and without passing through its account, transfers the same to the assessee and the assessee booked this amount as interest free security deposit under schedule 5 of the balance sheet. This security deposit neither shown as advance or receivable at the assets side nor shown as liability towards customers in the balance sheet of M/s Silver Line Holding Pvt. Ltd. Hence, the contention of the assessee that this amount has been received from M/s Silver Line Holding Pvt. Ltd. as refundable liability is not supported with the balance sheet of M/s Silver Line Holding Pvt. Ltd.

(d) However, as per tri party agreement among M/s Silver Line Holding Pvt. Ltd., customers and the assessee the security deposits are non refundable. Actually this is a valid documents which executes at the time of receiving the security deposits and the contract which the assessee has mentioned to he entered between the assessee company and M/s Silver Line 1tolding Pvt. Ltd. is only a modus operandi to avoid the taxability of the income/receipt and to create complexity in the transaction in order to hide the genuine nature of transaction.

(e) As per clause 18(c) of Buyer Agreement entered by respective buyer and assessee company and M/s Silver Line Holding Pvt. Ltd. the security deposit will be non Refundable.

e. The contention of the assessee that my predecessor during the course of assessment proceedings for AY 2012-13 sought detailed note on the said nature and taxability of the interest free security deposit and in response thereto, assessee filed the details and the AO after due examination, queries raised and explained and which were accepted is not tenable as the principle of Res Judicata or estoppels does not apply- Held in New Jehangir Vakil Mills Co. Ltd v. Commissioner of Income-tax [1963] 49 ITR 137 (SC)."

3. Learned AO further concluded that assessee was recipient of non-refundable security and that M/s. Silver Line Holding Pvt. Ltd. acted as conduit between the buyer of Villa and assessee in collecting non-refundable security deposit and making payment to the assessee only. Accordingly the addition was made.

4. Learned CIT(A) has sustained the addition and reasons of the Learned AO for which the assessee is in appeal before this Tribunal and grounds for the A.Y. 2013-14 which are common (except to the amounts involved) to the A.Y. 2015-16 are reproduced as below:

1(i) That on facts and in law the Ld. CIT(A) erred in treating the sum of Rs.39,00,000/- received during the year as refundable maintenance security deposit from M/s. Silver Line Holdings Pvt. Ltd. in terms of agreement dated 24.12.2008 as taxable income of the appellant.

(ii) That the claim of refundable maintenance security deposit amounting to Rs.39,00,000/- considered as income chargeable to tax is not on the basis of any legal right or legal claim and same is merely for maintenance and running of Golf course for providing services to the members and accordingly presumption of any income in respect of same is highly arbitrary and misconceived.

(iii) That the AO has not even specified section and head of income under which such refundable security deposit is chargeable to tax.

2(i) That the Ld. CIT(A) while confirming the impugned addition failed to consider and appreciate that the said maintenance security deposit is a liability which is refundable to the developer M/s. Silver Line Holding Pvt. Ltd. on expiry of term of contract and as such presumption of same as taxable income is illegal, arbitrary and misconceived.

(ii) That appellant is holding such refundable security deposit in trust for running and maintenance of Golf course and there is no case of any taxable income in the hands of appellant.

(iii) That in any case money collected from members is for mutual benefit of members and as such there is no case of any taxable income in the hands of appellant.

3. That orders of lower authorities are not justified on facts and same are bad in law.

4. That the appellant craves leaves to add, alter, amend, forgot any of the grounds of appeal at the time of hearing."

5. Heard and perused the record.

6. At the outset learned AR submitted that the assessment for A.Y. 2009-10 onwards till A.Y. 2012-13 were reopened u/s 147 of the Act on the basis of observation of the learned AO in A.Y. 2013-14. However, as the matter reached the Tribunal, Coordinate Benches have quashed the assessment orders on the ground of change of opinion as the matter of taxability of security deposit was duly examined and accepted during proceedings u/s 143(3) of the Act for A.Y. 2011-12 and A.Y. 2012-13. It was thus submitted that following the rule of consistency, once the position with regard to non-taxability of refundable security deposit stood accepted in all the preceding years, wherein substantial amount was received, a contrary view cannot be taken in the year under reference. Reliance in this regard was placed on the judgment of the Hon'ble Supreme Court in Radhaswami Satsang v. CIT (1992) 193 ITR 321 (SC); and CIT v. Excel Industries Ltd. (2013) 358 ITR 295 (SC).

6.1 It was further submitted on the basis of the agreements dated 24.12.2008 and 29.09.2009, available at pages 39 to 48 of the PB, that M/s Silverline Holdings Private Limited ("SHL") and the assessee had entered into these agreements for the sole purpose that the security deposits received by SHL were handed over to the assessee as custodian. The same was to be used exclusively for the purpose of

maintenance and operations of the Golf Course. It was submitted that the interest on security deposits from buyers were received by SHL and SHL has handed over it to the assessee. It was submitted that since it is refundable amount, it was reflected in the financials as a liability and the interest earned from same has been accounted in 'other incomes'. It was thus submitted that tax authorities have failed to appreciate the facts in the correct perspective to treat it as non-refundable security in the hands of assessee.

7. On the other hand, learned DR submitted that learned tax authorities have duly appreciated the fact that the transaction was between related parties and the manner in which they have drawn the terms and conditions, is such that it makes it a colourable devise to avoid showing the same as income. It was submitted that the veil needs to be removed to understand the colourable devise as the non-refundable security received from the customers/buyers of villa owners in the hands of SHL had been shown to be refundable security deposits in the hands of assessee and SHL has merely acted as conduit. It was submitted long period of agreement shows there is no intention of returning the deposit.

8. Giving thoughtful consideration to the material on record and the submissions it comes up from the agreement dated 24.12.2008

between SHL and the assessee that it has been prefaced with the following words:

> "*WHEREAS:*
>
> *That SGDCP has the expertise to undertake the operation and maintenance management of the said GOLF COURSE at TARUDHAN VALLEY COMPLEX*
>
> *That SHL is interested to entrust the responsibilities for the operation and maintenance management of the GOLF COURSE to SGDCPL*
>
> *AND NOW*
>
> *That after due deliberations and discussions with each other both the parties SHL has agreed to entrust the operation and maintenance management of the GOLF COURSE and also perform the functions of a Custodian for proper investments of IFSD (Interest Free Security Deposit) to SGDCPL on the terms and conditions hereinafter contained."*

8.1 The aforesaid show that the intention of entering this agreement was based on the consideration that the interest free security deposit (IFSD) received by SHL are entrusted to the assessee as 'Custodian'. This signifies that assessee was merely holding the (IFSD) on account of SHL. The financials of assessee establish it firmly that assessee has shown IFSD, as liabilities. The interest earned on them is shown as 'income from other sources'.

8.1.1 Here it is also relevant to take note of the Buyer's agreement made available at pages 12 to 38 of the PB which is a tripartite agreement between the buyer of Villa/unit with developer SHL, which long with it's subsidiary companies collectively known as TVC

PROMOTERS, owns the land, and M/s Silver glades Golf Development Company Private Limited (SGDCPL), which is the assessee here in. The Clause 17 of the Buyer's agreement show that SGDCPL as a separate entity was developing the Golf Course and non-transferable membership was granted to the buyers in the said Golf Course on the request of TVC PROMOTERS for which TVC PROMOTERS had entered into Lease Deed with SGDCPL and had entrusted the development, operation and management work of Golf course to SGDCPL. Then Clause 18 of the Buyer's agreement provided for payment of interest free security deposit to the SHL, who had agreed for onward transfer of the same amount to SGDCPL for due performance of its obligation towards SHL. Clause 18(d) of the Buyers's agreement show that it was agreed with the Buyers of units that security deposits shall be employed in suitable investment as deemed fit by SHL for generating revenue/income and the revenue income so earned from the investments shall be employed towards operation and maintenance cost of the Golf Course and in case of any shortfall in running the O&M costs, after adjusting the incomes from the investments made out of the security amount the same shall be made good by raising the additional bills to the buyers for recouping the shortfall in such O&M expenses of the Gold Course.

8.2 Next Clauses 3.1, 3.1.1 and 3.1.2 of agreement dated 24.12.2008 between SHL and the assessee are the relevant clauses which need to be reproduced to understand as to what was the agreed mode of revenue and income sharing between SHL and the assessee company:

> *"3.1 SHL has collected the Interest Free Security Deposit from the Buyers and remitted/ shall remit the same to SGDCPL for due performance of its obligations towards SHL. SGDCPL shall employ the Interest Free Security Deposit in suitable investment as deem fit by SHL for generating revenue income and the revenue / income so generated from the investment shall be employed toward Operation and Maintenance of GOLF COURSE including but not limited to renew and revalidate al licenses, permits and approvals etc. It is clearly agreed and understood that SHL shall also advance Interest Free Security Deposit to SGDCPL in respect of the unsold Villas from time to time pending their sale/collection from the buyers.*
>
> *3.1.1 SGDCPL will also generate revenue/income from other related sources like Golf Course operations i.e. Income through Caddie chages, Guest Green Fee, Guest Entry Fee, Sale of Golf Accessories, Sale of Golf Merchandise, Sale of Golf Equipments, Rental through Golf set and Golf shoes etc. SGDCPL will also generate revenue by way of advertisement/branding/hording and sponsorship of the golf course. The revenue/income so collected will be shared as per scheme of sharing as applicable/introduced by SHL and as amended/modified from time to time.*
>
> *3.1.2 In case of any shortfall in running the Operation and Maintenance cost, after adjusting the income from the investment made out of security amount as well as other related sources, the same shall be made good by raising the additional bill by SGDCPL upon the Buyers for recouping the shortfall in such Operation and Maintenance expenses of GOLF COURSE, with the approval of SHL"*

8.3 Further, agreement dated 29.09.2009 is a corrigendum to the main agreement dated 24.12.2008, which has a clause specifically mentioning that assessee will refund the amount of security deposit to SHL along with details of interest earned and expenditure which was incurred by the assessee till the date of termination of the contract.

8.4 As the aforesaid clauses 3.1, 3.1.1 and 3.1.2 when considered with the relevant clauses of Buyer's agreement establish that the assessee was given responsibility of operation and maintenance of the Golf Course on the basis of self sustenance mechanism and SHL had taken the non-refundable security deposit from the prospective owners of the properties for developing and user of the Golf Course. Security deposit was non-refundable in the hands of SHL and that entity had received the money directly from the owners of the Villas/ units. These clauses provide that after generating revenue from various activities and receipt of interest out of investment of IFSD, if there is a short fall the assessee had right to raise additional bills upon the buyers for recouping the short fall. Remuneration of assessee company was to be determined after computing of O&M charges. Thus IFSD in the hands of assessee was just a source to finance the operation and maintenance charges for development,

operation and management of Golf course for which the assessee had accepted responsibility under the tripartite agreement. IFSD in the hands of assessee were not in nature of revenue receipt as considered by the Ld. CIT(A)

8.5 The Bench is of the considered opinion that there is no reason to lift the veil between assessee and SHL as revenue cannot dispute the fact that the maintenance of the Golf Course required expertise and expenditure for which the assessee company may have been separately incorporated. The tenure of the agreement of ten years and extendable thereafter in itself does not create any suspicion on the intention because it is only when the agreement is for a longer period, then only investment in purchases of equipment etc. for running of the Golf Course can be recouped.

8.6 The Bench is of the considered opinion that learned AO has fallen in error in concluding that SHL acted as a conduit between the buyers of villas and the assessee for collecting non-refundable security deposits and making payment to the assessee only. The Buyer's agreement established that SHL along with its other subsidiaries was owner of the land where they were developing residential units called 'Golf Homes' and Golf Course was a provision for the same. The entrustment of development, construction,

operation and management of Golf Course, Golf Club and other facilities and amenities on the land owned by TVC PROMOTERS was the only responsibility of the assessee.

8.7 Learned AO has heavily stressed on the fact that security deposits are not shown as advance receivables at the asset side nor shown as liability towards customers in the balance-sheet of M/s Silver Line Holdings Pvt. Ltd. and that without passing the amount through its account M/s Silver Line Holdings Pvt. Ltd. transferred the same to the assessee. Thus in the hands of assessee has to be considered to be non-refundable. In the light of various clauses of Tripartite agreement and the agreement between the assessee and SHL discussed above it is established that both the companies were operating in different fields of the project. The rights in the land vested with SHL along with other subsidiaries and they were transferred in favour of any buyer of Villa/ Units and qua service or amenities of Gold Course, SHL was separately charging non-refundable deposits. It was responsibility of SHL to account for the same in books for which assessee cannot be faulted.

8.8 Ld. tax authorities below have completely ignored the corrigendum agreement dated 29.09.2009, considering the same to be self serving ignoring that other clauses of tripartite Buyer's agreement

and agreement between assessee and SHL dated 24.12.2008 were themselves clear of the fact that what assessee was getting was something in the form of refundable deposit . The learned CIT(Appeals) has rightly concluded in para 4.1.1 of his order that non-refundable security deposits received by appellant has nexus with O&M services provided to the clients. However, he failed to appreciate that in the hands of assessee the same were refundable and merely as means to finance O&M services. Thus, the same were not of revenue nature receipts.

8.9 Apart from above, there is also force in the contention of learned AR that the Coordinate Bench in assessee's own case, in ITA Nos. 403, 404 & 405/Del/2019 for A.Y. 2009-10 to 2011-12, has considered the nature of deposits in the hands of assessee as refundable security deposits, as one of the possible view and para 12.1 in the form of submissions on behalf of the assessee and para 17 & 18 in the form of findings of Coordinate Bench are relevant and same are reproduced :

> *"12.1 So far as the merit of the case is concerned, the Id counsel for the assessee submitted that M/s Silverline Holding Pvt. Ltd. is the owner of villas and golf course and the same were sold to the prospective buyers as per buyers agreement between M/s Silverline Holding Pvt. Ltd. and the prospective buyers. In order to provide value added services, M/s Silverline Holding Pvt. Ltd., entered into operation and maintenance agreement dated 24.12.2008*

with assessee and offered use of golf course facilities. The assessee was on/y responsible for running and maintenance of golf course and scope and area of activities was defined under the said agreement. Further the security deposit collected by M/s Silverline Holding Pvt. Ltd., from the customers was transferred to the assessee for running and maintenance of golf course and not as trading receipt. The Id. counsel for the assessee drew the attention of the bench to clause 3 of the operation and maintenance agreement and submitted that the assessee is neither the owner of the golf course nor have any legal right to collect any security refundable or otherwise from the buyers. Referring to clause 18-22 of the buyers agreement, copy of which is palced at pages 19 to 45 of the paper book, he submitted that the security deposit was received by M/s Silverline Holding Pvt. Ltd., m terms of buyer's agreement. He submitted that a perusal of the terms of buyer's agreement shows that the security deposit shall be collected by M/s Silverline Holding Pvt. Ltd., and the same shall be employed by M/s Silverline Holding Pvt. Ltd., or its nominee for running and maintenance of golf course as per instructions of M/s Silverline Holding Pvt. Ltd. The right to collect and use the security deposit vests with M/s Silverline Holding Pvt. Ltd. The assessee company is only eligible for use of refundable deposit for running and maintenance of golf course as per advice and direction of M/s Silverline Holding Pvt. Ltd. and it has no legal or ownership right in respect of such deposit. Referring to copy of the audited balance sheet, he submitted that the assessee company is holding such deposit as custodian and for exclusive use of running and maintenance of golf course. Referring to the corrigendum dated 29th September, 2009, copy of which is placed at pages 50-52 of the paper book and the renewal agreement dated 27th October, 2017, copy placed at pages 53-55 of the paper book, he submitted that as per the above, the assessee company can hold the deposit only for the purpose of maintenance and running of the golf course. Once the assessee company cease to have running and maintenance right or becomes nonfunctional, the security deposit being liability is to be refunded to M/s Silverline Holding Pvt. Ltd.

……. .

17. *We have considered the rival arguments made by both the sides, perused the j orders of the authorities below and the*

paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case is engaged in the business of operation and maintenance of golf course owned by M/s Silverline Holding Pvt. Ltd. It filed its return of income on 23.11.2009 declaring loss of Rs.62,12,919/-. We find the Assessing Officer, on the basis of the assessment order for assessment year 2013-14, wherein the refundable security deposit received from M/s Silverline Holding Pvt. Ltd. was considered as taxable income in the hands of the assessee, reopened the assessment by issue of notice u/s 148 of the IT Act. Rejecting the various arguments advanced by the assessee, the Assessing Officer made addition of Rs.7,00,64,800/- on account of such security deposit received by the assessee during the year under consideration on the ground that such security deposit received by M/s Silverline Holding Pvt. Ltd., is non-refundable and has to be brought to tax. Further, the security deposit so received from M/s Silverline Holding Pvt. Ltd., has not been shown as advances in the balance sheet of M/s Silverline Holding Pvt. Ltd., and although the assessee in the balance sheet has shown such interest free security deposit but has not shown the same in the name of M/s Silverline Holding Pvt. Ltd. We find the ld.CIT(A) upheld the reassessment proceedings initiated by the Assessing Officer the reasons for which have already been reproduced in the preceding paragraphs. It is the submission of the Id. counsel for the assessee that the reassessment proceedings initiated u/s 147/148 are based on change of opinion and the reasons to believe are not based on any tangible material or information extraneous to the record. In sum and substance, the case of the assessee is that the reopening of the assessment is not valid since the reasons are based on change of opinion, re-appraisal of facts already on record and the reasons are not based on any tangible material.

18. *We find some force in the above argument of the Id. counsel for the assessee. From the various details furnished by the assessee in the paper book, we find the original assessment for assessment year 2011-12 and 2012-13 were completed u/s 143(3) whereas the assessment for assessment year 2009-10 and 2010-11 were completed ii/s 143(1). In the orders passed for assessment year 2011-12 and 2012- 13, the issue of security deposit was duly accepted and it was not disturbed. However, during the assessment year 2013-14, the Assessing Officer deviated from his earlier stand and brought to tax the refundable security deposit to tax.*

> *While reopening the assessment for the impugned assessment year, the Assessing Officer observed that the earlier assessments are not binding as per principle of res judicata or estoppels. Under this scenario, the question that arises for our consideration is as to whether the reassessment proceedings are valid when the original assessment has been completed u/s 143(1) for the impugned assessment year [for assessment year 2010-11 - 143(1) and for assessment year 2011-12 - 143(3)] when the very issue of chargeability of refundable security deposit as revenue receipt or not was examined in 2012-13 and the reassessment proceedings were initiated on the basis of the findings in assessment year 2013-14."*

9. As a consequence of aforesaid discussion the Bench is inclined to sustain the grounds no. 1, 2(i), 2(ii) as argued while ground no. 2(iii) as not pressed. The appeals of the assessee are allowed. Impugned addition in the hands of assessee stand deleted.

Order pronounced in the open court on 26.06.2023

Sd/-	**Sd/-**
(ANIL CHATURVEDI)	**(ANUBHAV SHARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date:- 26.06.2023

Priti Yadav/*
**Kavita Arora*

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI