

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री एस.एस. गोदारा, न्यायिक सदस्य केसमक्ष

BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER  
AND SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.2957 & 2958/Mds/2014

निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

The Deputy Commissioner of  
Income Tax,  
Company Circle – V(2),  
Chennai - 600 034.

(अपीलार्थी/Appellant)

M/s Road Safety Club (P) Ltd.,  
v. No.4, Lady Desika Chari Road,  
Mylapore, Chennai - 600 004.

PAN : AABCR 9430 K

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri P. Radhakrishnan, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri R. Sivaraman, Advocate

सुनवाई की तारीख/Date of Hearing : 25.02.2015

घोषणा की तारीख/Date of Pronouncement : 11.03.2015

### **आदेश /O R D E R**

**PER S.S. GODARA, JUDICIAL MEMBER:**

These Revenue's appeals for assessment years 2008-09 and 2009-10 arise from two separate orders of the Commissioner of Income Tax (Appeals)-V, Chennai, both dated 01.08.2014 passed in ITA No.616/2013-14(A)-V and in ITA

No.707/13-14(A)-V respectively allowing the assessee's claim of treating 1/8<sup>th</sup> membership receipt amounts as income and safety bonus claim of ₹1,24,76,016/-, in proceedings under Section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. For the sake of convenience and brevity, we proceed assessment year-wise in dealing with these appeals.

**I.T.A. No. 2957/Mds/2014 (Assessment Year 2008-09)**

3. The Revenue's pleadings in this case challenge the CIT(Appeals)'s action in allowing the assessee's claim offering only 1/8<sup>th</sup> of membership receipts received during the relevant previous year as its income and also in deleting disallowance of safety bonus claim of ₹1,24,76,016/-.

4. The assessee-company promotes safety amongst vehicle owners through insurance. It had filed its return on 30.09.2008 admitting an income of ₹1,19,097/-. The same was 'summarily' processed. Thereafter, the A.O. took up 'scrutiny'. He inter alia noticed the assessee to have received membership fees of ₹10,95,32,513/- as on 31.03.2008. It had enrolled members and received one time membership fee; refundable and non-

refundable. The relevant membership tenure was 3/5/8 years from the date of enrollment. The assessee would insure its members with insurance companies against accidents. It recognized only 1/8<sup>th</sup> of receipt of membership fees as income of relevant previous year. There is no dispute that the CIT(Appeals) and the 'tribunal' have already upheld the very method of recognition of income in earlier assessment year. The Assessing Officer rejected the assessee's practice and observed that the Revenue had not accepted the aforesaid appellate orders. He considered the entire membership fees as its income to be assessed in the impugned assessment year instead of a time span of eight years.

5. The assessee preferred an appeal. The CIT(Appeals) has followed the tribunal's decision for allowing its ground as under:-

*5.2 After considering the appellant's submissions. The appellant has filed copy of the CIT (A) and Honourable ITAT's orders relating to the assessment years 2001-02 to 2007-08 and I have perused the same. Similar issue has been considered by the Honourable ITAT, Chennai for the assessment years 2001-02 to 2007-08 and the issue 'has been decided in favour of the appellant.*

*Extract from the orders of the Honourable ITAT bench "B", Chennai in ITA No.1651/Mds/2010 dated 16-12-2010 for the assessment year 2007-08 is given below:*

*"We have perused the orders and heard the rival contentions. In so far as ground Nos.2 and 3 are concerned, these are similar to the grounds raised by the Revenue for assessment year 2006-07. In its order dated 25<sup>th</sup> June, 2010 after considering ground Nos.2 and 3 of the Revenue, this Tribunal in I.T.A. No. 457/Mds/2010 for assessment year 2006-07 decided as follows:-*

*3. As clear from the grounds itself, the first issue is regarding membership fee receipt. Ld. CIT(A) relied on this Tribunal's order in assessee's own case for assessment year 2001-02 to 2004-05. The second issue is on safety bonus liability claimed based on actuarial valuation. Ld. CIT(A) allowed the claim of the assessee again relying on the above cited decision of this Tribunal. The facts for the impugned assessment year are pari materia and nothing has been brought on record by the revenue to show any decision of any higher judicial authority which would warrant a different view. We thus find no error in the order of the CIT(A). Accordingly, ground Nos.2 & 3 of the revenue stand dismissed. We also find from the order of the CIT(Appeals) that he had made a bifurcation of refundable fees and non-refundable fees before allowing relief to the assessee. With regard to the contention of the learned O.R. that amortization was not considered in the order of the Tribunal of the earlier year, we are of the opinion that the Revenue if it was agitated, should have taken remedies available under the statutes, against the order of the Tribunal for the assessment year 2006-07. Nevertheless we also see that by considering 1/8<sup>th</sup> of the membership fees for each other 8 years, in effect the CIT(Appeals) had approved a method of amortization. We do not find any reason to interfere with the order of the CIT(Appeals) on the above two grounds since no facts which are different from the earlier year has been brought*

*out by the Revenue. Accordingly, ground Nos. 2 and 3 stand dismissed"*

6. We have heard both sides and gone through the relevant findings. The Revenue had sought to tax the similar membership advances in the relevant year of receipt in earlier assessment years as well. The assessee produces copy of the co-ordinate bench decision (supra) rejecting this course of action. The Revenue only submits that the issue has not attained finality as its appeals are pending before the hon'ble jurisdictional high court. We observe that this plea does not form a valid ground to adopt a different action in the present case. The CIT(Appeals)'s findings are affirmed.

7. The Revenue's second substantive ground seeks restoration of safety bonus disallowance of ₹1,24,76,016/- deleted in lower appellate order. The assessee had credited this amount being excess provision of safe bonus written back in its profit & loss account. It claimed exclusion of the same amount from its total income as already subjected to tax in the earlier assessment year. It also clarified to have given back the membership fee as safety bonus in the end of the membership

period in case the member concerned did not raise any claim. The Assessing Officer did not agree and disallowed / added the safety bonus claim sum of ₹1,24,76,016/-.

8. The lower appellate authority has accepted the assessee's ground raised, as under:-

*“7.2 After considering the appellant's submissions, as per the membership scheme, the appellant has to give back the membership fee collected as Safety Bonus during the end of the membership period, if there had been no claim by the member during he membership period. This liability for payment of Safety Bonus extends to the entire period of membership i.e., 8 years. The Bonus liability has been quantified on the basis of 'Actual Valuation' by one Mr. A. Venkataraman, Actuarian, Chennai. The appellant has claimed the Safety Bonus liability as a deduction. In the earlier assessment years 2001-02 to 2007-08, the appellant had provided for such Safety Bonus liability and claimed the same. The same was disallowed in those years. On appeals the CIT(A) directed the appellant to file computation of Safety Bonus liability which could be considered to have accrued during the relevant period on the basis of the Law of probability as adopted and accepted internationally in the field of insurance. The appellant filed the estimates which were accepted by the CIT(A). The CIT(A) directed the Assessing Officer to allow Safety Bonus liability as per Actuarial valuation. Against the CIT(A)'s orders, the department filed appeal before the ITAT. The ITAT, Chennai has dismissed the departmental appeal. The details of ITAT's orders for the assessment years 2001-02 to 2007-08 have already been furnished in the earlier part of this order.*

*The facts of the case for the year under consideration are the same as those for the earlier years.*

*Respectfully following the Honourable ITAT's decisions quoted above, wherein it was held that Safety Bonus liability is allowable. Therefore the net present value of the Safety*

*Bonus liability on the Actuarial Valuation basis is to be allowed.*

*The appellant has furnished the detailed workings. The net present value of the Safety Bonus liability works out to ₹3,95,87,354/- The detailed workings given by the appellant is annexed as Annexure B to this order. The Assessing Officer is directed to allow ₹3,95,87,354/- as Safety Bonus liability for the assessment year 2008-09.”*

9. Heard both sides. Record perused. We find that the CIT(Appeals) has followed the tribunal's decision in deleting the impugned disallowance of safety bonuses written off. The Revenue neither draws any distinction on facts nor does it quote any case law to the contrary directly covering the issue. We follow consistency in these circumstances and reject the Revenue's arguments.

I.T.A. No. 2957/Mds/2014 is dismissed.

**I.T.A. No. 2958/Mds/2014 (Assessment Year 2009-10)**

10. The Revenue's pleadings in this appeal are identical to those decided in I.T.A. No. 2957/Mds/2014. The parties are fair enough not to dispute this technical position. Thus, we reject the Revenue's arguments herein as well.

I.T.A. No. 2957/Mds/2014 is also dismissed.

11. To sum up, the Revenue's both appeals are dismissed.

Order pronounced on Wednesday, the 11<sup>th</sup> of March, 2015 at Chennai.

sd/-  
(A.Mohan Alankamony)  
(ए. मोहन अलंकामणी)

लेखा सदस्य/Accountant Member  
Member

sd/-  
(S.S. Godara)  
(एस.एस. गोदारा)

न्यायिक सदस्य/Judicial

चेन्नई/Chennai,  
दिनांक/Dated, the 11<sup>th</sup> March, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-V, Chennai
4. आयकर आयुक्त/CIT-V, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.