

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, K, मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "K", MUMBAI**

**Before Shri Saktijit Dey, Judicial Member, and  
Shri Ashwani Taneja, Accountant Member**

**ITA NO.7590/Mum/2012  
Assessment Year: 2008-09**

Star Cruises (India) Travel Services P. Ltd., C/o Kanodia Chauhan Co. G 15 Everest, Tardeo Road, Mumbai-400034	<b>बनाम/ Vs.</b>	DCIT 5(3), Room No.573, Aayakar Bhavan, M.K. Rd, Mumbai-400020
(Assessee)		(Revenue)
P.A. No.AAFCS4154H		

निर्धारिती की ओर से / Assessee by	Shri Nishit Gandhi (AR)
राजस्व की ओर से / Revenue by	Shri Sambit Mishra (DR)

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>31/03/2016</b>
आदेश की तारीख / <b>Date of Order:</b>	<b>13/04/2016</b>

**आदेश / O R D E R**

**Per Ashwani Taneja (Accountant Member):**

This appeal has been filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals)-15, Mumbai {(in short 'CIT(A)}}, dated 16.10.2012 for the assessment year 2008-09, passed against the assessment order passed by the Assessing Officer (in short 'AO') u/s 144C(3) of the Act, on the following grounds:

*1. On the facts and in the circumstances of the case and in law, Learned Commissioner of Income Tax (Appeals) erred in confirming the computation of the Arm's Length Canvassing fees of 3% on Gross Cruise fare received from the travel agents and not on Net Cruise Fare on departure basis;*

*2. On the facts and in the circumstances of the case and in law, Learned Commissioner of Income Tax (Appeals) erred in not accepting the audited financials of the appellant company prepared on the proper application of the prescribed Accounting Standards which has been accepted for all the previous assessment years*

**2.** During the course of hearing, arguments were made by Shri Nishit Gandhi, Authorised Representative (AR) on behalf of the Assessee and by Shri Sambit Mishra, Departmental Representative (DR) on behalf of the Revenue.

**3.** The only issue raised in this appeal by the assessee is that whether the income of the assessee should be computed on the basis of 3% of the amount of net cruise fare collected by the assessee from various travel agent and other customers in India or on the basis of 3% of net cruise fare of the ships on departure basis.

**3.1.** The brief facts culled out from the orders of lower authorities are that the assessee receives Retainership Fees as per canvasser agreement dated 01.03.2005 for canvassing business for cruises plying outside India. The Retainership fee is received from Star Cruise Management Ltd. which is registered in 'Isle of Mann' which is a tax heaven country. The assessee explained to the TPO that it

receives 3% on net cruise fares as per article 4.1 of the Agreement. It was also explained that the rate was guided by IATA Resolution which fixes rate for GSA commission at 3%. The copy of Resolution was provided by the assessee to the TPO. Rate of commission at 3% was therefore, found to at arm's length by the TPO.

**3.2.** It was seen by the TPO that the assessee had collected cruise fare on behalf of SCML amounting to Rs.70,52,07,670/-. The fare was collected before the departure of the cruise, as per regular practice. The assessee had shown a remittance of Rs.68,77,88,280/-. The assessee was asked to explain as to why it did not receive 3% of cruise fare collected on behalf of SCML i.e. Rs.70,52,07,670/-. The assessee submitted reconciliation to the TPO vide letter dated 10.10.2011. However, the same could not be reconciled by the assessee. The reconciliation was as under:-

<b><u>As per audited a/c.</u></b>	<b><u>Rs.</u></b>
Opening balance 1/4/07	2,42,88,258
Add: collections during the year	70,52,07,670
Less : Commissions on cruise collection	1,73,67,409
Less : Remittances during the year	68,77,88,280
Less: Audit adjustment during the year	1,69,89,894
Closing balance payable to SCML (AE)	4,13,30,133

**3.3.** The TPO observed that the Audit adjustment was not explained. Nor any evidence of collection of Rs.70,52,07,670/- was filed despite requisition during

transfer pricing proceedings. He further observed that the Agreement very clearly provided that SCML shall pay the assessee for retainer fees equivalent to 3% of Cruise Fares (the retailer fees). Net Cruise Fares was defined by the assessee vide submission dated 10.10.2011 to the TPO as gross fare less discount less agents commission. The AO observed that as per agreement, the assessee should have received 3% on 'net cruise fare collected. This comes to 3% of Rs.70,52,07,670/- = Rs.2,11,56,230/-. The TPO observed that as against this the assessee had received an amount of Rs. 1,73,67,409/-. The short payment received was equal to Rs.37,88,821/-. Therefore, an adjustment of Rs.37,88,821/- was made to retainership fees received by the assessee. The AO passed his order in conformity with the ALP so determined by the TPO.

**3.4.** Being aggrieved, the assessee filed an appeal before the Ld. CIT(A) against this adjustment/addition made by the TPO/AO. It was submitted by the assessee in the first appeal that during the proceedings before Transfer Pricing Officer, this fact was clearly stated that Indian company had received 3% Retainership Fees on the 'departure basis' and hence the collection figure is not at all relevant for computing the quantum of Retainership Fees. The assessee also submitted copies of submissions made before the Transfer Pricing Officer as well as Assessing Officer in this regard. It was further contended that the Canvasser Agency Agreement, nowhere provides that 3% commission would be on collection basis.

The assessee also enclosed transfer pricing orders of preceding years i.e. assessment years 2004-05, 2005-06, 2006-07 and 2007-08, wherein the TPO had consistently upheld the method of accounting and practice followed by the assessee for showing the fee @ of 3% of Net Cruise Fare on departure basis and accepted the same to be at arm's length fees. It was also submitted that method of accounting of the assessee has been all along accepted by the assessing officer.

**3.5.** However, Ld. CIT(A) was not satisfied with the arguments of the assessee. It was held by him that the assessee has been following accrual basis of accounting and therefore, the assessee should credit its income on the basis of amount of fee collected by it, because as soon as the assessee collects the amount of Fare, the fee becomes accrued to it. In view of the detailed discussion made by the Ld. CIT(A) in his order, the addition made by the assessing officer was upheld.

**3.6.** Being aggrieved, the assessee filed an appeal before the Tribunal.

**3.7.** During the course of hearing before us, it has been submitted by the Ld. Counsel that method of accounting has been accepted by Income Tax Department not only in the preceding year but also in the subsequent years. In support of his claim he also submitted order passed by the assessing officer for the assessment year 2010 -11. He also submitted copies of questionnaires issued by the assessing officer as well as replies filed by the assessee during the course of

assessment proceedings for assessment year 2010-11, showing that the detailed discussion was made on this issue and after that only the claim of the assessee was accepted and income disclosed by the assessee @ of 3% of the amount of fee on departure basis was accepted in the assessment order. On the other hand Ld. Departmental Representative submitted that terms of agreement related to payment of fee nowhere mention that departure of ship shall be the basis for the payment of fee. The right of the assessee gets accrued the moment collection is made from the travel agents/other customers. The AE signs agreements with the travel agent separately regarding the performance of actual services of the cruise. Therefore, to say that departure is the basis for the commission is not correct. It was submitted that these facts would be evident from the agreements enclosed by the assessee in its paper book. It was also submitted that accounting policy of the assessee makes a mention that fee is computed on collection basis whereas it has been credited in the books of accounts on the basis of departure of the ship, showing self contradictory approach of the assessee.

**3.8.** We have heard both the sides and also gone through the orders of the lower authorities. The only dispute to be resolved by us is that whether the computation of 3% of the amount of net cruise fare receivable from the AE should be credited by the assessee in its books of account on the basis of amount collected by it from various customers or on the basis of departure of ships. We find that to decide this issue we do not

need to travel much because The Income Tax Department has already resolved this issue, in principle, in preceding and subsequent years. It is noted that in the earlier years, same method of accounting has always been accepted by the Income Tax Department. The income credited by the assessee has always been accepted. It is further noted that in the subsequent year i.e. assessment year 2010–11, this issue has been analysed in detail by the assessing officer. It is noted that during the course of assessment proceedings of AY 2010-11, vide letter dated 27.11.12, the assessing officer raised specific query on this issue. The assessee gave reply vide its letter dated 14-12-2012, wherein it explained in detail as how the method of accounting followed by the assessee was correct as per law and facts. It was also explained in detail that it was not feasible for the assessee to credit the income on the basis of collection of amount for various customers. The relevant portion of the reply filed by the assessee is reproduced below: –

*“Now with this back ground and detail note referred above, we answer your Show Cause - Why 3% on Net Cruise fare as mentioned in the agreement should not applied to Rs. 88,96,77,049/- (**Gross cruise fare received from PSA**) i.e. Rs. 2,66,90,3111- should not be considered as gross revenue as against Rs.2,36,00,486/- credited to Profit & Loss account.*

*i. The amount of Rs.88,96,770491- is the amount of Gross Cruise Fare. collected by the travel agent from the passenger and forwarded to the assessee company to remit the same to SCML, and accordingly, Rs.8896,77,0491- has nothing to do with the activity of canvassing and revenue recognition.*

*ii. Referring to 2.1(b) and (e), monies received from travel agent (not customer) are varied, e.g., cruise packages,*

*shore excursions, in relation to sales booking and confirmation, etc. Consequently, it would be difficult to impute recognition of revenue as 'all monies received', as the monies collected may not all properly relate to cruise fares.*

*iii. What if the various travel agents opt to remit the cruise fare collected from the passenger directly to SCML (assessee company is not in picture), how the revenue would be recognized in such scenario and there will be under reporting of revenue.*

*iv. The Accounts of the Indian Company for all the years are audited under the Companies Act as well as Income Tax Act by the eminent Chartered Accountants and the same has been filed before the Registrar of Companies, Income Tax and has been accepted by the share holder in the Annual General Meeting of the Company. There has been no question from any Government agency on the true and fairness of accounts.*

*v. The assessee company is in operations since Asst. Year 1999-2000 i.e. almost 10 years of operation considering the present case i.e. AY 2010-11, all these years the revenue recognized on monthly basis @3% on net cruise fare of Cruise departed has been accepted by the previous Assessing Officers as well as the Transfer Pricing Officers. Attached is the Orders of the T P O for the previous years.*

*vi. Please read para 5.3 (iii) on page 5 of the CIT(A) order for Assessment Year 2008-09, the transfer pricing officer as well as CIT(A) has misunderstood the facts of the case that the assessee company is doing the booking for passenger and collecting the money from the customers towards such travels and the duty of the assessee as canvasser gets completed and hence the amount of collection to be basis for determining the revenue and no point in postponing the revenue recognition - which is not correct fact, the assessee company neither books the cruise nor collects cruise fare from the passenger. In fact if one read closely the operating para and see the facts of the case, the various section of the accounting standard quoted by the CIT(A) are in fact in*

*favour of the assessee company's revenue recognition principle. Further, the assessment has not reach the finality since the assessee is in process of filing the appeal before the Hon'ble tribunal.*

*vii. Even on assumption (not admitting) that the assessee company recognize the unilaterally, there is a great-uncertainty **for recovering** the same **from** SCML, please refer, AS 9 - para 9 provides Effect of Uncertainties on Revenue Recognition - Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of the service it would not be unreasonable to expect ultimate collection. Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g., for escalation of price, export incentives, interest etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognize revenue only when it is reasonably certain that the ultimate collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognized at the time of sale or rendering of service even though payments are made by installments.*

*viii. Even if it is assumed that 3% to base on Cruise fare received from Agents (not admitting), Rs.88,9677049/- is a GROSS amount of cruise fare whereas the agreement provides for NET cruise fare. For detailed of deductions from the Gross Cruise Fare, please refer the communication letter/ addendum to agreement.*

*ix. The cruise fare so received from the PSAs (Travel Agents) to be remitted to SCML, foreign company are being kept in Short Term Deposits which has earned Taxable Interest Income and offered to tax.”*

**3.9.** The assessing officer considered the reply of the assessee and accepted the submissions made by the assessee and accordingly he did not make any addition in this regard. We have also carefully examined this issue and find force in the

submissions of the assessee. In our opinion also, collection of amount from the customers and its remittance to the AE is altogether a separate activity which is independent from the accrual income of the assessee on the basis of terms of agreement which may be very much based upon happening of some other event(s). Further, if the assessee has been consistently following a particular method of accounting wherein it recognizes its income on the basis of net cruise fare of ships departed, we do not find anything wrong therein. The business organizations are expected to follow prudent accounting policies keeping in view facts of the case, nature of their business activities and other related circumstances. When the Income Tax Department has itself accepted this method of accounting in all the years, then in a particular year it is not expected from it to compel the assessee to deviate from the same. Thus, keeping in view all the facts and circumstances of the case, we principally agree with the approach and method of accounting followed by the assessee. But, we shall also like to take care of the apprehension expressed before us by the Ld. DR. It has been contended that there may be possibility of leakage of revenue. It has been submitted that the assessee has nowhere shown that the income earned by it on the net amount of fare collected by it has finally been credited in its books of account of the assessee irrespective of the year. It was submitted that if the income has not been credited in this year because the date of departure of the ship falls in the next year, then the assessee is expected to show that in the next year whenever the ship

departed, the corresponding income of the assessee has been credited by the AE in the account of the assessee and accordingly the assessee has also credited the same in its profit and loss account in the relevant year. We find force in the argument of the Ld. DR. Accordingly, principally agreeing with the method of accounting followed by the assessee, we send this issue back to the assessing officer for the limited purpose of verification of facts. The assessee shall show before the assessing officer that the income accrued to the assessee at the rate of 3% of net cruise fare has been ultimately credited in its books of accounts, if not in the year under consideration, then in the subsequent years as and when the departure of the ship had taken place. The sole purpose of this exercise is to ensure that there is no revenue leakage and the total amount of income actually earned by the assessee has been credited in its books of accounts and has been actually offered to tax in the territory of India. The assessing officer shall give adequate opportunity of hearing to assessee and shall take into account all the details and evidences as may be brought on record by the assessee. The assessee is free to raise all legal and factual issues in this regard. At the cost of the repetition, we again clarify that we have principally accepted the method of accounting of the assessee and therefore assessing officer is not allowed to reopen that issue. The exercise to be done by the assessing officer shall be limited to verify the fact as stated above. Thus with these directions this issue is remitted back the file of the assessing officer. Thus, grounds raised by the

assessee may be treated as partly allowed for statistical purposes.

**4.** In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 13<sup>th</sup> April, 2016.

Sd/-  
(Saktijit Dey)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-  
(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 13/04/2016

*Patel, P.S./नि.स.*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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 (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai