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LANDBASE INDIA LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX

IN THE ITAT DELHI BENCH 'B'

SUSHMA CHOWLA, VP. & PRASHANT MAHARISHI, AM.

ITA No. 7269 to 7271/Del/2019

May 14, 2020

(2020) 59 CCH 0496 DelTrib

(2020) 185 ITD 0040 (Delhi-Trib),

Legislation Referred to

Section 28, 143(3)

Case pertains to

Asst. Year 2013-14, 2014-15 and 2016-17

Cases Referred to

[*Calcutta Stock Exchange Association Ltd 36 ITR 222*](#)

Deputy Commissioner of Income Tax vs. JP Greens Ltd in ITA Number 3545-3547/Del/2009

Principal Commissioner of income tax vs. Gulmohar Green Golf and Country Club Ltd (2017) 392 ITR 601(Gujarat)

Counsel appeared:

Rohit Jain, Adv., Somiya Jain, CA for the Assessee.: Amit Jain, Sr. DR for the Revenue.

PRASHANT MAHARISHI, AM.:

1. All these three appeals filed by the assessee for three different Assessment Years related to the single issue largely and therefore, they are heard together and disposed of by this common order.
2. The lead first assessment year involved in this appeal is Assessment Year 2013-14 and therefore, the facts related to that are narrated.

3. The assessee is a company engaged in the business of operation of golf course, construction of hotels, housing complex and merchandising. It filed its return of income at a loss of Rs. 20187486/-. The assessment u/s 143(3) of the Income Tax Act, 1961 was passed by the Id ACIT, Circle-15(1), New Delhi on 03.03.2016. The Id AO disallowed depreciation of Rs. 1228317/- on golf course. The assessee has claimed depreciation on golf course @15% considering it as "plant and machinery". The Id AO denied the depreciation for the reason that according to him golf course is developed on the land and whatever improvement is made on that land, it remain as a land. According to him, only the value of land is enhanced by constructing golf course thereon. Thus, according to him it is only land, which is not depreciable. Hence, it amounts to allowing depreciation on land, land being not a depreciable assets, he disallowed it.

4. The assessee challenged the same before the Id CIT (A), he held that the golf course is a "building" and depreciation should be allowed considering the same as a "building". The assessee aggrieved with that order has preferred appeal before us.

5. Ground NO. 1-assessee challenges that depreciation on the golf course should be allowed considering it as "plant and machinery."

6. We have heard the rival contention and find this issue has been considered by the coordinate bench in assessee's own case for Assessment Year 2005-06 to 2011-12 as per order dated 26.08.2019 wherein, the coordinate bench has held that the golf course is a plant and machinery and assessee is eligible for depreciation thereon @15%. The coordinate bench held so following the decision of the coordinate bench in case of another assessee as per para No. 13 as under:-

"13. In the present case also before us, the golf course owned and used by the assessee for the purpose of the business as a tool of the business of the assessee. It is functioning like a plant in case of the assessee. Further, it is not the case of the revenue that assessee has claimed any depreciation on the land. It is similar to the depreciation on pond allowed in the case of an aquaculture company by the honourable Supreme Court in 379 ITR 335 and honourable Gujarat High Court holding that mineral oil well also constitute a plant. The learned CIT-A is not correct in saying that playing equipments, creating landscaping, holes, ponds and others are being done in the regular course to facilitate the game of golf and not into any production of goods and services. In fact, by creating these facilities, the assessee has created a service facility for its members and it produces revenue for the assessee. It is not always necessary that each plant should produce certain other tangible goods. Further, in case of the assessee in certain assessment years under section 143 (3) of the income tax act the claim of the depreciation holding the golf course as plant has been accepted by revenue and in subsequent years in assessment year 2006-07 to 2009-10 also the claim of the assessee is accepted. In fact the claim of depreciation on golf course as a plant stands accepted in assessment year 98-99 to assessment year 2000-01, 2002-03 and 2006-07 to 2009-10. Even otherwise, coordinate bench in case of Deputy Commissioner of Income Tax vs. JP Greens Ltd. in ITA number 3545-3547/Del/2009, on identical facts and circumstances considered golf course as plant and depreciation at the rate of 25% was allowed holding that assessing officer himself has allowed depreciation at that rate in past in that particular case. The decision relied upon by the learned CIT DR that Toll Road does not qualify as a plant for higher rate of depreciation as held by the honourable Delhi High Court in 52 taxmann.com 21 (Delhi) in the Moradabad Toll Road Co Ltd vs. Asst Commissioner of income tax was decided as "road" was specifically considered as part of building in the part A of appendix 1 of The Income tax Rules 1962. Thus, the fact of that case is distinguishable. Further, it was not stated before us that revenue has not accepted the

decision of the coordinate bench in DCIT vs. JP Greens Ltd where golf course was held to be plant. Therefore, it stands concluded that golf course is a plant looking to the nature of business of the assessee. Further, the judicial precedents relied upon by the parties also only lays down the proposition established by the higher judicial forum supports the above view. In view of this, ground number 1 of the appeal of the assessee is allowed reversing the views of the lower authorities, holding that golf course is a plant on which assessee is entitled to the depreciation at the rate of 25% under the income tax act."

As there is no change in the facts and circumstances, we respectfully following the decision of the coordinate bench, allow ground No. 1 of the appeal directing the Id AO to grant depreciation on cost of developing golf course on land considering it as plant and machinery.

7. Second ground of appeal is with respect to the addition of Rs. 1300016/-on account of security deposit and membership fees. The assessee received the above sum from the members and claims it to be a capital receipt. The Id AO considered the same as revenue receipt and thus charges to tax. The assessee-preferred appeal before the Id CIT (A) who also vide para No. 8 dismissed the appeal of the assessee therefore; assessee is in appeal before us.

8. We have heard the rival parties and found that identical issue has been considered by the coordinate bench in assessee's own case for earlier years. The coordinate bench in its above order for Assessment Year 2005-06 has dealt with this issue in para NO. 38 onwards as under:-

"38. We have carefully considered the rival contention and perused the orders of the lower authorities on the issue. The learned CIT-A has decided the whole issue as per paragraph number 7.1-7.7 of his order. Undisputedly the assessee is running a golf course and making the revenue collection by way of refundable security deposit and membership fees from the members. This indicates that the assets are fully operation and the members are deriving a benefit from the use of the assets. As such, it is not in dispute that appellant is carrying on the business of running of golf course. Facts shows that the assessee has received certain security deposits and membership fees collected by the appellant from the members along with the borrowed funds were utilized for the creation of the fixed assets by the assessee. The learned CIT-A following the decision of the honourable Supreme Court income Calcutta stock exchange Association Ltd and Delhi stock exchange Association Ltd held that the security deposit received from the members are not capital receipt but are revenue receipts and are taxable as income of the appellant. He further held that nature of such security deposit is whether refundable or non-refundable is immaterial. He further noted that though the assessee has offered the golf course membership fees of INR 35288416/-as income in subsequent years such deferment of income is not relevant on the facts and circumstances of the case of the appellant as the membership fees received by the assessee is also assessable as income for the assessment year in which it is received. He further noted that it is a fact that unless the security deposits and membership fees were paid by the members, the appellant would not have granted the membership of the golf club to those members. He therefore held that both this sum of the security deposit as well as the membership fee has correctly been charged by the learned assessing officer as income of the assessee. The learned CIT-A with respect to the entrance fees and membership fees has followed the decision of the honourable Supreme Court in case of Calcutta Stock Exchange Association Ltd 36 ITR 222 and Delhi stock exchange Association Ltd 41 ITR 495 wherein it has been held that entrance fee/membership fees received from the members is an income.

On careful analysis of the order of the learned CIT-A, according to us he has wrongly applied the decision of the Calcutta stock exchange Ltd and Delhi stock exchange Ltd. In Calcutta stock exchange Ltd the issue of the monthly fees received by the assessee. Therefore, it cannot be said that if the fees received which is pertaining to the year itself it cannot be said not to be the income of the assessee. In the case of the assessee, assessee has received advance membership fees for which the services were to be rendered in subsequent years and assessee has already offered such income in the subsequent years on accrual basis. It is not the case of the revenue that assessee has not offered golf course membership fees income in the year to which it pertains to. It is also not the case of the revenue that assessee provides all the services to the members in the year in which the membership fee is received, and in subsequent years, no services were rendered. The membership fees are chargeable to tax under the provisions of the business income. The assessee follows undisputedly, mercantile/accrual system of accounting. Therefore, income/expenses of the assessee are also required to be recorded as income only based on accrual system. Thus, whenever the Income accrues to the assessee irrespective of the time of receipt of such income is taxable as business income. Under the mercantile system of accounting, the assessee has an option to account for any income either on accrual or after accrual, on the basis of method of accounting regularly followed by it. So far as the issue of the entrance fee and membership fees received by the assessee, we are of the opinion that it should be accounted for as income only when it accrues to the assessee. Merely because the income, which is pertaining to subsequent years, is received by the assessee in earlier years does not become the income of the earlier years under section 5 of the income tax act in case of either business income or u/s 28. Hence, according to us, the membership fee income of the assessee should be chargeable to tax in the year to which it pertains. Therefore, we reverse the finding of the learned CIT-A in holding that that a sum of INR 3 5288416 received as golf course membership fee is chargeable to tax as income. As such, it is the claim of the assessee that subsequently such income has already been offered for taxation therefore for the year to which it pertains. Therefore, we direct the learned assessing officer to tax the above income of INR 3 5288416 as Income for the impugned assessment year to which it pertains to. Therefore, if the assessee has offered the income, to the year to which it pertains to, the addition is required to be deleted. However, it is not known that how much income is pertaining to which year, therefore, we direct the assessee to show before the assessing officer about the taxability of this income in the subsequent years on accrual basis. The learned assessing officer may verify the same and if the income has been offered in subsequent years on accrual basis, the addition deserves to be deleted in this year.

39. With respect to the issue of taxability of the security deposit against the golf course membership fee of INR 3 11460578/-, the claim of the assessee is that such security deposit is refundable in nature. It is required to be refunded to the members at the end of the specified years or as per the terms of the membership. If the membership is refundable to the members, it becomes a liability of the assessee, which is required to be repaid. It is not the case of the revenue that assessee do not refund or under no obligation to refund the above sum at the end of the specified period or on happening of certain events. The identical issue arose before the honourable Gujarat High Court in Principal Commissioner of income tax vs. Gulmohar Green Golf and Country Club Ltd. 392 ITR 601 (2017)(Gujarat) wherein it was been held that the security deposit recovered from the members at the time of their enrolment as a member is refundable on occurrence of the contingency mentioned in the rules and regulation and bylaws, therefore it is required to be treated as a deposit, thus, a capital receipt. Therefore, it was held that it is not an income of the assessee. As in the case of the assessee also the security deposit is refundable hence respectfully following the decision of the honourable Gujarat High Court in 392 ITR 601, we also hold that the sum of refundable security deposit received from the members of the assessee is a capital receipt and cannot be charged to tax as income. Accordingly, we direct the learned assessing officer to delete the addition to the extent of

refundable deposit received from the members. Accordingly, ground number 2 and 3 of the appeal of the assessee is partly allowed."

9. There is no change in the facts and circumstances of the case and therefore, for the reason given by the coordinate bench and respectfully following the same, we direct the Id AO to delete the addition of Rs. 1300016/-on account of security deposit and membership fees received. Accordingly, ground No. 2 of the appeal for Assessment Year 2013-14 is allowed.

10. Accordingly, appeal of the assessee for AY 2013-14 is allowed.

11. Coming to the appeal of the assessee for Assessment Year 2014-15, which involves the only issue of allowability of depreciation on golf course, which has been decided by us, as per ground No. 1 of the appeal of the assessee for Assessment Year 2013-14. Therefore, for the similar reasons, we allow only ground of appeal no 1 of appeal of the assessee for Assessment Year 2014-15.

12. Thus, the appeal of the assessee for Assessment Year 2014-15 is allowed.

13. Now, We come to the appeal of the assessee for Assessment Year 2016-17.

Ground No. 1 of appeal is with respect to depreciation on account of golf course. For the reason given by us, while allowing ground No. 1 of the appeal of the assessee for Assessment Year 2013-14, we direct the Id AO to allow depreciation on cost of gold course developed on the land considering the same as "plant and machinery". Thus, ground No. 1 of the appeal is allowed.

14. Ground No. 2 of the appeal is identical to the ground no. 2 of the appeal of the assessee for Assessment Year 2013-14 with respect to taxation of security deposit and membership fees. As we have already allowed ground No. 2 of the appeal of the assessee for Assessment Year 2013-14, for the similar reasons, we also allow ground no. 2 of this appeal.

15. Accordingly, appeal of the assessee for Assessment Year 2016-17 is allowed.

16. In the result, all three appeals of the assessee are allowed.

Order pronounced in the open court on 14/05/2020.
