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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision : 18.03.2021

+ **ITA 80/2021 & CM No.10780/2021**

PR. COMMISSIONER OF INCOME TAX-5 Appellant

Through: Mr. Ajit Sharma with Mr. Anant Ram
Mishra, Advs.

versus

M/S. LANDBASE INDIA LTD. Respondent

Through: Mr. Rohit Jain with Mr. Aniket D.
Agrawal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

1. This appeal is directed against the order dated 26.08.2019 passed by the Income Tax Appellate Tribunal [hereafter referred to as “the Tribunal”].
2. According to the appellant-revenue, the impugned order passed by the tribunal raises a question of law for consideration by this Court.
- 2.1 The appellant-revenue avers that the deletion ordered by the tribunal *qua* the addition made by the assessing officer *vis-a-vis* the security deposit amounting to Rs.31,14,60,578/- is perverse.
3. To be noted, we are concerned, in the present appeal, with the assessment year 2005-2006. The tribunal in paragraph 40 of its order has observed as under:

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“With respect to the issue of taxability of the security deposit against the golf course membership fee of INR 3114605781-, the claim of the assessee is that such security deposit is returnable 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.”

4. Mr. Ajit Sharma, learned standing counsel, who appears for the appellant-revenue, says that the security deposit is in the nature of a “tradeable asset” and therefore, the tribunal ought not to have reversed the decision of the assessing officer as well as the Commissioner of Income Tax (Appeals).

4.1 In support of his plea, Mr. Sharma relies upon paragraphs 3.4, 3.7 and 3.8 of the assessing officer's order dated 18.12.2007.

5. Having heard Mr. Sharma, we are of the view that no substantial question of law arises, for consideration by this Court, for the following reasons:

5.1 As would be evident from the extract of the impugned order passed by the tribunal, a finding of fact has been returned that the security deposit is refundable to the members of the assessee club. The tribunal has gone on to hold that the security deposits being refundable, it continues to be shown as liability in the books of the assessee club up-until it is paid.

5.2 The record also discloses that the assessee club, in support of its plea, that the security deposit is refundable and payable to its member upon the person's membership coming to an end, had relied upon the following articles contained in its membership plan.

“In Article 2 – Definition of Terms

“ ”

Section 21

“Security Deposit” means the interest free refundable amount as described in the Membership Plan, that must be paid by individual member at the time of applying for membership.

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In Article 3 – Membership

“ ”

Section 4 – Application and Selection

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d) *Security Deposit*

An interest free Security Deposit shall be required for individual membership classifications. *The amount of the Security Deposit and the manner of payment shall be established by the Management Committee from time to time and shall be set forth in the schedule of fees.*

e) *Refund of Security Deposit*

The security deposit amount which shall be paid by every individual member shall be non interest bearing and is refundable. *If a Member opts for refund, he or she shall cease to be a Member of the Club thereafter. If there is any charges which the Company would have incurred for on behalf of the member or in case there are any other dues determined as payable by the Member, the same shall be deducted from the amount of the Security Deposit and balance amount paid.*

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(Emphasis is mine)

5.3. Having regard to the provisions of Articles 2 and 3, which we have extracted hereinabove, it is clear that the security deposit is both interest free and refundable, which is required to be paid to the member, if she/he opts for its refund or ceases to be a member of the assessee club.

5.4. Given this finding of fact, to our minds, since the security deposit continues as a liability in the books of the assessee club, the assessing officer could not have added the same to the income of the assessee club. The tribunal has correctly, in our opinion, deleted the addition.

6. As indicated above, these are the findings of fact, which we are not inclined to interfere with, as we find that there is no perversity in the view taken by the tribunal on the given facts.

6.1. The appeal is, accordingly, dismissed.

7. In view of what we have stated hereinabove, no further orders are called for *qua* the application for condonation of delay. The same is, accordingly, disposed of.

RAJIV SHAKDHER, J

TALWANT SINGH, J

MARCH 18, 2021/pmc

Click here to check corrigendum, if any

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