

आयकर अपीलीय अधीकरण, न्यायपीठ – “सि” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
(समक्ष)Before श्री महावीर सिंह, न्यायीक सदस्य एवं/and श्री सी.डी.राव, लेखा सदस्य)  
[Before Sri Mahavir Singh, JM & Shri C. D. Rao, AM]

**आयकर अपील संख्या / I.T.A Nos. 1545 & 1546/Kol/2011**

**निर्धारण वर्ष/Assessment Years: 2003-04 & 2004-05**

Income-tax Officer, Wd-7(1), Kolkata. Vs. Happy Home & Hotels Pvt. Ltd.  
(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)  
(PAN: AAACH 7373 L)

Date of hearing: 15.03.2012

Date of pronouncement: 23.03.2012

For the revenue: Shri D. J. Mehta

For the Respondent: N o n e

**आदेश/ORDER**

**Per Mahavir Singh, JM ( महावीर सिंह, न्यायीक सदस्य)**

These appeals by revenue are arising out of separate orders of CIT(A), VIII, Kolkata in Appeal Nos.196/CIT(A)-VIII/Kol/10-11 and 411/CIT(A)-VIII/Kol/09-10 dated 08.08.2011. Assessments were framed by ITO, Wd-7(1), Kolkata u/s.144/147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2003-04 and u/s. 147/143(3) of the Act for Assessment Years 2004-05 vide his separate orders dated 24.12.2010 and 29.12.2009 respectively.

2. The only common issue in these two appeals of revenue is against the order of CIT(A) deleting the disallowance made by Assessing Officer on account of licence fee payable at Rs.9 lacs in each of the years and not treating the same u/s. 43B of the Act.

3. We have hard rival submissions and gone through facts and circumstances of the case. Brief facts are that the assessee took land at Satyanarayan Park from Kolkata Municipal Corporation (KMC) for construction of air condition market on lease. The assessee sublet the shops after construction. According to Assessing Officer, this amount of Rs.9 lacs in each of the assessment year pertains to licence fee collected from tenants of Satyanarayan Park complex but not deposited with KMC. Hence, this amount was added by Assessing Officer by invoking the provisions of section 43B of the Act stating that licence fee falls within the

purview of section 43B of the Act for the reason that agreement between KMC and assessee was not submitted to prove the relationship between assessee and KMC that of landlord and licensee. According to Assessing Officer, KMC is a non-profit self governed body and their relationship cannot be that of tenant and landlord. For this, AO relied on the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Ahmedabad Electricity Co. Ltd. (2003) 262 ITR 97 (Guj.) wherein electricity duty collected by assessee as licence fee was considered to be disallowed u/s. 43B of the Act. Aggrieved, assessee preferred appeal before CIT(A), who deleted the addition by observing that the licence fee payable to KMC is neither a tax nor a duty nor a fee nor a cess in view of the decision of Hon'ble Calcutta High Court in the case of CIT Vs. Varas International Pvt. Ltd. (1997) 225 ITR 831 (Cal). Further, the CIT(A) noted that in assessee's own case for Assessment Year 1997-98 the same issue has been allowed in favour of the assessee and which has not been contested by revenue and has become final. Aggrieved, now revenue is in appeals before us for both the assessment years in question.

4. During the relevant assessment years, assessee collected licence fee, which was disclosed in its books of accounts and credited to P&L Account under the head "other incomes". This sum of licence fee was recorded under the head revenue because assessee appropriated its income as it is not required to pass on to KMC. According to assessee, under the licence agreement dated 15.02.1985 with KMC, assessee had taken this space in Satyanarayan Park, air condition market on licence for a period of 30 years with the right to sub licence or sublet to other tenants. Under the terms and conditions of the aforesaid agreement, it is stipulated to pay rent by way of licence fee to KMC amounting to Rs. 9 lacs for each of the year. The assessee claimed this amount payable to KMC in the P&L Account as deduction. According to assessee, this agreement with KMC, the assessee is a tenant and KMC is landlord. According to assessee, this licence fee is essentially in the nature of rent payable to KMC as licence fee but in the nature of rent. According to assessee, this payment is purely a contractual obligation arising out of purely contractual relations in view of licence agreement dated 15.02.1985 entered into by and between assessee and KMC. The assessee in its appreciation of legal position took this payment outside the purview of section 43B of the Act as this is not a payment falling under any statute or there is no statutory obligation as provided in the provisions of section 43B of the Act. It was the contention of the assessee that the relation between assessee and KMC is that of landlord-licencee/tenant. In execution of the aforesaid licence agreement, which is analogous to a contract between the parties, the payment of licence fee in the nature of rent is not a statutory levy but an ordinarily quid pro quo. We find that the CIT(A) relying on the decision of Hon'ble Calcutta High Court in the case of Varas

International Pvt. Ltd. (supra) allowed the claim of assessee, wherein Hon'ble Calcutta High Court held that the fee or charges received by the Government for parting with its exclusive right to manufacture or vend intoxicants is neither a tax nor a duty nor a fee nor a cess. Here in the present case, the KMC's exclusive right to built market and let out to shop owners on licence basis under licence agreement dated 15.02.1985 is not a fee as prescribed u/s. 43B of the Act. Since in assessee's other years i.e. Assessment Years 1997-98 and 1998-99 the department has accepted the decision treating the fee as rent, we applying the principle of consistency confirm the order of CIT(A). This issue of revenue's appeal is dismissed.

5. In the result, appeals of revenue are dismissed.

6. Order pronounced in open court on 23.03.2012.

Sd/-

सी.डी.राव, लेखा सदस्य  
(C. D. Rao)  
Accountant Member

Sd/-

महावीर सिंह, न्यायीक सदस्य  
(Mahavir Singh)  
Judicial Member

(तारीख) Dated : 23rd March, 2012

वरिष्ठ निजि सचिव Jd.(Sr.P.S.)

आदेश की प्रतिलिपि अग्रेषित:- Copy of the order forwarded to:

1. अपीलार्थी/APPELLANT – ITO, Ward-7(1), Kolkata.
2. प्रत्यर्थी/ Respondent – Happy Home & Hotels Pvt. Ltd., 11, Crooked Lane, 1<sup>st</sup> floor, Kolkata-69
3. आयकर कमिशनर (अपील) / The CIT(A), Kolkata
4. आयकर कमिशनर/CIT, Kolkata
5. वभागिय प्रतिनीधी / DR, Kolkata Benches, Kolkata

सत्यापित प्रति/True Copy,

आदेशानुसार/ By order,

सहायक पंजीकार/Asstt. Registrar.