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T.C.(Appeal).Nos.1465 to 1469 of 2010



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :08.04.2026

Pronounced on :28.04.2026

CORAM

**THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE SHAMIM AHMED**

T.C.(Appeal).Nos.1465 to 1469 of 2010

T.C.A.No.1465 of 2010

Commissioner of Income Tax-LTU,
Chennai.

..Appellant/Appellant

/versus/

M/s.Mahindra Holidays & Resorts (India)Ltd.,
2 Lalithapuram, Gaudia Mutt Road,
Royapettah, Chennai 600 014.

..Respondent/Respondent

Tax Case Appeal has been filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai “B” Bench, Dated 26.05.2010 in ITA No.2412/Mds/2005.

For Appellant :M/s.V.Pushpa, SSC

For Respondent :Mr.Arvind P.Datar. SC for
Mr.Sandeep Bagmar and
Mr.Rahul Unnikrishnan

T.C.A.No.1466 of 2010

Commissioner of Income Tax-LTU,
Chennai.

..Appellant/Appellant

/versus/



M/s.Mahindra Holidays & Resorts (India)Ltd.,
2 Lalithapuram, Gaudia Mutt Road,
Royapettah, Chennai 600 014.

..Respondent/Respondent

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Tax Case Appeal has been filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai “B” Bench, Dated 26.05.2010 in ITA No.2413/Mds/2005.

For Appellant :M/s V.Pushpa, SSC

For Respondent :Mr.Arvind P.Datar. SC for
Mr.Sandeep Bagmar and
Mr.Rahul Unnikrishnan

T.C.A.No.1467 of 2010

Commissioner of Income Tax-LTU,
Chennai.

..Appellant/Appellant

/versus/

M/s.Mahindra Holidays & Resorts
(India)Ltd.,
2 Lalithapuram, Gaudia Mutt Road,
Royapettah, Chennai 600 014.

..Respondent/Respondent

Tax Case Appeal has been filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai “B” Bench, Dated 26.05.2010 in ITA No.2414/Mds/2005.

For Appellant :M/s V.Pushpa, SSC

For Respondent :Mr.Arvind P.Datar. SC for
Mr.Sandeep Bagmar and
Mr.Rahul Unnikrishnan

T.C.A.No.1468 of 2010

Commissioner of Income Tax-LTU,
Chennai.

..Appellant/Appellant

/versus/



M/s.Mahindra Holidays & Resorts (India)Ltd.,
2 Lalithapuram, Gaudia Mutt Road,
Royapettah, Chennai 600 014.

..Respondent/Respondent

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Tax Case Appeal has been filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai “B” Bench, Dated 26.05.2010 in ITA No.2415/Mds/2005.

For Appellant :M/s V.Pushpa, SSC

For Respondent :Mr.Arvind P.Datar. SC for
Mr.Sandeep Bagmar and
Mr.Rahul Unnikrishnan

T.C.A.No.1469 of 2010

Commissioner of Income Tax-LTU,
Chennai.

... Appellant/Appellant

/versus/

M/s. Mahindra Holidays & Resorts (India)Ltd.,
2 Lalithapuram, Gaudia Mutt Road,
Royapettah, Chennai 600 014.

... Respondent/Respondent

Tax Case Appeal has been filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai “B” Bench, Dated 26.05.2010 in ITA No.2416/Mds/2005.

For Appellant :M/s V.Pushpa, SSC

For Respondent :Mr.Arvind P.Datar. SC for
Mr.Sandeep Bagmar and
Mr.Rahul Unnikrishnan

**COMMON JUDGMENT**

(Judgment was made by Dr.G.JAYACHANDRAN, J.)

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Batch of five appeals was filed by the Revenue in respect of the assessee company on an identical issue for the Assessment Years 1998-1999 to 2002-2003.

2. The brief facts leading to these appeals are capsulated as under:-

The assessee company is engaged in the business of development and sales of holiday time-share resorts. For the Assessment Years 1998-1999 to 2001-2002, the assessments of the assessee were reopened since the assessee's Balance Sheets as on the end of each previous year showed the following amounts under the head "Deferred Income-Advance towards Members' facilities". For the Assessment Year 2002-2003, the similar amount was considered in the regular assessment itself. The increase in the balance as at the end of each previous year, from the corresponding date of the preceding year, was as under:

Assessment Years	Previous Year Ending	Balance under deferred income	Increase compared to the preceding year
1998-1999	31.03.1998	14,98,30,966/-	14,10,85,366/-
1999-2000	31.03.1999		10,28,64,235/-
2000-2001	31.03.2000	46,01,55,275/-	18,22,74,032/-
2001-2002	31.03.2001	53,20,92,172/-	7,19,36,897/-
2002-2003	31.03.2002	72,98,54,048/-	19,77,61,866/-



3. The above increases in the balances represented amounts collected from the Time-Share Members during the year towards Membership Fees, but not recognised as revenue for the relevant year. When asked to explain, the assessee's authorised Representative stated that only 40% of the Membership fees collected from the Members is shown as revenue in the year of collection and the balance 60% treated as deferred income to meet future expenditure. For the Assessment Years 2001-2002 and 2002-2003, the corresponding allocation was 60% and 40%. It was stated that the balance amount was set apart for being recognised as revenue in the subsequent 33 years, during which the assessee was expected to provide time-share facilities to the members. In support of the said accounting method, the assessee relied on the decision of the Hon'ble Supreme Court in CIT vs. Calcutta Co. Ltd., [37 ITR 81].

4. The reason given by the assessee that it had set apart 60% of the receipts by providing facilities over a period of 33 years, not accepted by the Assessing Officer for the following reasons:-

a) The assessee follows the Mercantile System of Accounting. Therefore, its income has to be accounted for on accrual basis. The concept of deferred income is not recognized under the Income Tax Act unless expressly provided.

b) Under Clause 6 of the Confirmation Agreement, apart from the membership fees collected upfront/instalments, the assessee has reserved the



right to charge annual maintenance and all incidental expenses, fixed at its discretion. Whether the member avail the resort facility or not, the assessee collects annual maintenance charges from the members to maintain the rent. Further, there are other condition in the membership rules that the members have to pay utility charges, access and interest on default payment. Clause 5 of the Membership Rules show that 40% paid by the members is exclusively towards accommodation and the balance 60% is for facilities such as exchange between seasons and type of apartments, RCI Exchange, advancing facility, etc. Therefore, the assessee is not incurring any extra expenses for providing these facilities to the customers. The deferred portion of 60% and 40% does not relate to any expenditure to be incurred by the assessee.

5. Aggrieved by the assessment orders, the assessee filed appeals before the Commissioner of Income Tax (Appeals). The Appellate Authority, *vide* its combined order dated 15.07.2005, accepted the case of the assessee by holding that the utility charges collected does not cover replacements/renovation costs to be incurred at various stages. The estimated cost for replacement/renovation over the period of contract, placed by the assessee based on the gross percentage of gross fixed assets as the percentage of total cumulative sales (with increases for the last two assessment years), was accepted by the Commissioner of Income Tax (Appeals) in favour of the assessee. Thus, for the Assessment Years



1998-1999 to 2000-2001 the assessee's declaration of 40% membership fees collected as income of the year of receipt and for Assessment Years 2001-2002 and 2002-2003, the declaration of 60% membership fees collected as income of those respective years was also accepted. The method of accounting showing part of the fees collected as deferred income to match the future expenditures to be debited corresponding over the next 33 years, approved by Commissioner of Income Tax (Appeal) and deleted the additions made by the Assessing Officer.

6. As against the order of the Commissioner of Income Tax (Appeals), which went partly in favour of the assessee, the Revenue preferred appeals ITA Nos.2412 to 2416 of 2005, covering the Assessment Years 1998-1999 to 2002-2003. For the same period, in respect of invoking of Section 147/148 of the Act against the assessee, Cross Objection Nos.7 to 11 of 2006 were filed by the Assessee. The ITAs filed by the Revenue and the Cross Objections filed by the Assessee were all taken up together for consideration by the ITAT. In view of conflicting decision among the two members, a Special Bench of three members of the Tribunal was constituted under Section 255(3) of the Income Tax Act to consider the following questions:-

(i) Whether the entire amount of the time share membership fee receivable by the assessee upfront at the time of enrolment of a member is the income chargeable to tax in the initial year when there is a contractual



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obligation fastened to the receipt to provide the services in future over the terms of the contract.?

(ii) Whether of facts and in the circumstances of the case the initiation of proceedings under Section 147/148 in the above cases is legal or valid?

7. Out of five assessments, starting from Assessment Years 1998-1999, 1999-2000, 2000-2001, 2001-2002 & 2002-2003, the assessment of the year 2002-2003 is a normal assessment under Section 143(3) of the Act. The other four assessments 1998-1999, 1999-2000, 2000-2001, 2001-2002 were reopened under Section 147 of the Act. Since the assessment for the year 1998-1999 was reopened after four years from the end of the relevant assessment year, the appeal was not entertained. For the remaining three assessment years 1999-2000, 2000-2001 and 2001-2002, the Tribunal considered the second issue which was raised by the assessee in the cross objection and held that reopening the assessments for the assessment years 1999-2000, 2000-2001 and 2001-2002 are valid. Consequently, the Cross objection filed by the assessee was dismissed holding that the reopening of assessments was valid.

8. In respect of the First issue regarding deletion of the addition made by the Assessing Officer towards receipt from the customers, the Tribunal held that the Company receives the membership fee either in lump-sum or in instalment.



In addition to the membership fee, the Company also had charges Annual Maintenance Charges (AMC) or Annual Subscription Fees (ASF) or administrative charges. These charges generally collected irrespective of the fact whether the member makes use of the resort or not. Further, if the member utilises the resort, he makes an additional payment towards utilities like electricity, water, air-conditioning, heater etc. There are other incidental facilities also like exchange facilities, one-up exchange, RCI exchange etc. There are certain rules pertaining to cancellation of membership also along with the rules pertaining to quantification of refund. Therefore, the case of the assessee that though it has received the entire amount in one year only, its obligation to the members remain spread over the period of membership. Hence, keeping aside part of the fees as income of the subsequent years is permissible. It also added to say the income has accrued to or earned by the assessee, two conditions are to be fulfilled. They are, (i) it is necessary that the assessee must have contributed to its accruing or arising by rendering services or otherwise, and (ii) a debt must have come into existence and he must have acquired a right to receive the payment. In the case in hand, debt is created in favour of the assessee immediately on execution of the agreement. However, it cannot be said that the assessee has fully contributed to its accruing by rendering services. The assessee is bound to provide accommodation to the members for one week every year till the currency of the membership. Till the



assessee fulfils its promise, the parenthood cannot be traced to it.

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9. After referring to clauses in the Membership Rules and the judgment of the ITAT, it held that there is a definite liability cast on the assessee to fulfil its promises and therefore, it cannot be said that the entire fee received by it has accrued as income. The peculiar nature of the activity, along with the complexity attached to it, recognising the entire receipt as income of the year of receipt can lead to distortion. In fact, allowing the entire expenditure in one year will give a very distorted picture of the profits of that particular year. The only way to minimise such distortion is to spread over a part of the income over the ensuing years.

10. Accordingly, the Special Bench answered in favour of the assessee, accepting the proposition of the assessee that it is not justifiable to tax the entire income in a single year unmindful of the expenditure certainly be incurred during the remaining period of the contract. For these reasons, the Tribunal dismissed both the appeal of the Revenue as well the Cross-Objection of the assessee.

11. The batch of Appeals before us deals with the appeals preferred by the Revenue aggrieved by the order of the ITAT dismissing its appeals.



12. At the time of admission, the following common substantial questions of law were framed:

1. *Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the part of the time share membership fee receivable from the members upfront at the time of enrolment could be deferred, in the absence of any such provision in the Income Tax Act to defer revenue, especially when there was a contractual obligation fastened to the receipt to provide the services over the entire period of contract?*

2. *Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that Income from membership fee could be deferred to future years on the assumption that some unquantified future liabilities existed?*

3. *Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in not deciding the basis on which the said receipts referred to in the preceding questions should be treated as deferred income?*

4 *Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the membership fee income received by the assessee could be deferred, when the assessee collected annual maintenance charges and utility charges separately for every year from each member over the entire period of the contract, to cover the expenditure incurred over the period of the time share agreement?*



13. The Learned Counsel on either side, in support of their respective submissions, have placed reliance on the following judgments:

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(i) *Indian Molasses Company. (P) Ltd v. Commissioner of Income Tax* reported in [1959] 37 ITR 66 (SC).

(ii) *Metal Box Company of India Ltd v. Their Workmen* reported in 1968 SCC OnLine SC 83.

(iii) *Tuticorin Alkali Chemicals & Fertilizers Ltd v. Commissioner of Income Tax* reported in [1997] 227 ITR 172 (SC).

(iv) *Treasure Island Resorts (P). Ltd v. Deputy Commissioner of Income Tax* reported in [2004] 90 ITD 814 (ITAT/Hyd).

(v) *Commissioner of Income Tax-II, Hyderabad v. M/s.Treasure Island Pvt Ltd., I.T.T.A.No.241 of 2012, dated 10th July 2013.*

(vi) *Godhra Electricity Co. Ltd v. Commissioner of Income Tax, Gujarat-II, Ahmedabad* reported in [1997] 225 ITR 746 (SC).

(vii) *Calcutta Company Ltd v. Commissioner of Income Tax, West Bengal* reported in (1959) SCC OnLine SC 137.

(viii) *Madras Industrial Investment Corporation Ltd v. Commissioner of Income Tax,* reported in [1997] 225 ITR 802 (SC)



(ix) ***Rotork Controls India (P) Ltd v. Commissioner of Income Tax reported in [2009] 314 ITR 62 (SC).***

14. For an identical questions of law, this Court has decided in favour of the assessee and dismissed the Tax Case (Appeal) No.1419 of 2010, arising out of I.T.A.No.1705/Mds/2008 dated 06.07.2010, for the assessment year 2003-2004 in the assessee's own case.

15. In Tax Case (Appeal) No.1419 of 2010, we have held that the dictum laid down by the Andhra Pradesh High Court in ***Commissioner of Income Tax-II, Hyderabad vs. M/s.Treasure Island Pvt Ltd.***, was confirmed by the Hon'ble Supreme Court in respect of Time-Share business. The judgment of the Delhi High Court in ***Commissioner of Income Tax-III vs. Shyam Telelink Ltd reported in [2019] 101 Taxmann.com 218 (Delhi)*** and the judgment of the Gujarat High Court in ***Commissioner of Income Tax vs. Winner Business Link (P) Ltd reported in [2015] 230 Taxman 399 (Gujarat)***, following the decision of the Andhra Pradesh High Court in ***Treasure Island Pvt Ltd*** and the Delhi High Court in ***Commissioner of Income Tax vs. Dinesh Kumar Goel*** reported in ***[2011] 197 Taxman 375 (Delhi)***, also confirmed by the Hon'ble Supreme Court. Thus, the Courts have clearly established the legal position, approving the method of accounting adopted by the assessee. Courts have given legal



sanctity to the concept of deferred income as matching principle.

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16. Hence, we have no doubt that the accounting method adopted by the assessee been approved by the Hon'ble Supreme Court. Therefore, there is no necessity to interfere with the order passed by Income Tax Appellate Tribunal, Chennai, in the batch of Tax Case Appeals disposed through combined order dated 15.07.2005.

17. For the reasons stated above, the substantial questions of law are held against the appellant/Revenue.

18. As a result, the *Tax Case (Appeal).Nos.1465 to 1469 of 2010 stands dismissed.* There shall be no order as to costs.

(Dr. G.JAYACHANDRAN, J.) & (SHAMIM AHMED, J.)
28.04.2026

Neutral Citation :Yes
Index :Yes
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To,
The Income Tax Appellate Tribunal, Chennai.



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T.C.(Appeal).Nos.1465 to 1469 of 2010



Dr.G.JAYACHANDRAN, J.
&
SHAMIM AHMED, J.
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Pre-delivery Common Judgment made in
T.C.(Appeal)Nos.1465 to 1469 of 2010

28.04.2026