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T.C.(Appeal).No.648 of 2013



**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)No.648 of 2013

Commissioner of Income Tax,  
Chennai.

..Appellant/Respondent

/versus/

M/s Sterling Holiday Resorts (India) Ltd.,  
City Tower, No.7, 3<sup>rd</sup> Cross Street,  
Kasthuribai Nagar, Adyar, Chennai 600 020.  
PAN:AADCS4841D

..Respondent/Appellant

Tax Case Appeal has been filed under Section 260A of Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras “D” Bench, Dated 30.08.2012 in ITA No.471/Mds/2012.

For Appellant :Mr.Dr.S.Sathiyandarayanan, SSC

For Respondent :Mr.R.Vijayaraghavan for  
M/s Subboraya Aiyar, Padmanabhan and  
Ramamani



## **J U D G M E N T**

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

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The appellant is the assessee running timeshare resorts at various places in India. The fees collected for membership for the previous year 2001-2002, in the return of income for Assessment Year 2002-2003, deferred at the rate of 55% setting apart as provision for future expenditure. The Assessing Officer held that as per the mercantile system of accounting, the entire income accrued to be taxed as income of the current year and disallowed the deduction. The CIT(A) also confirmed the said disallowance.

2. On further appeal by the assessee to the Tribunal, ITAT considering the judgment of the *Special Bench of ITAT, Madras*, reported in [131 TTJ 1] and the decision in the case of *M/s.Mahindra Holidays and Resorts India Ltd.*, in ITA No:1613/Mds/2011 dated 25.05.2012, on an identical facts, allowed the appeals by the assessee.

3. The Tribunal, in sum and substance, held that the entire amount of timeshare membership fee receivable by the assessee upfront at the time of enrolment of a member is not the income chargeable to tax in the initial year on account of contractual obligation, that is fastened to the receipts to provide services in future over the term of contract.



4. As against the order of the ITAT in ITA No:471/2012 (for Assessment Year 2002-2003) the appeal by the revenue is before us for consideration. It is necessary to record at this juncture that the rest of the appeals by the revenue for the other assessment years were dismissed on account of low tax liability applying the CBDT circulars.

5. At the time of admission of this appeal, the following Substantial Question of Law was framed for consideration:-

*(1) Whether on fact and circumstances of the case, the Tribunal right in holding that the commissioner of Income Tax (Appeals) has erred in confirming the addition made by the assessing officer towards deferred income?*

*(2) Whether on facts and circumstances of the case, the Tribunal was right in holding that the 55% receipt from the sale of time shares in the resorts of the assessee is not the income of the assessee in the year of receipt?*

6. In recapitulation of the facts, the assessee M/s.Sterling Holiday Resorts (India) Ltd., is a company engaged in hospitality service, treated 45% of the receipts from time shares sale in its holiday resorts as income of the current year and deferred 55% of the receipt to be spread over to the remaining years of the



contract period. The accounting method adopted by the assessee was not accepted by the Assessing officer as well as the appellate authority. This was obviously due to conflicting views on deferred income matching the expected future expenditure. Wherever, the provision made for future expenditure which is contingent in nature, the deduction was disallowed. When it was established that the future expenditure is certain, the concept of matching principle was permitted. In so far as time share business, till the decision of the Special Bench of ITAT, Madras in *Mahindra Holiday Resort Ltd ([131 TTJ 1 (SB)]*, the view of the Tribunal was in favour of the Revenue.

7. However, the Special Bench, after considering the terms of timeshare Agreement and the Rules of the assessee company, came to a conclusion that the provision for future expenditure is not contingent but certain, irrespective of the other factors. The annual maintenance charges and the utility charges collected from the members is independent and unconnected to the facility and amenities promised to be provided for the members which are part of the right to occupy. In the case of timeshare, a debt is created on 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 a period of one week or so every year till the currency of the membership. Till the assessee fulfils its



promise, the parenthood cannot be traced to it. When there is definite liability cast on the assessee to fulfil the promise, it cannot be said that the entire fee received by the assessee is income accrued in the year of receipt, without spreading over to the years till the liability under the contract in force.

8. Following the decision of the Special Bench, which has considered the judgments touching on the issue. The ITAT has allowed the appeal of the assessee. Same is impugned in this appeal by the revenue.

9. When identical issue came up before the ITAT Hyderabad in Treasure Island case, the tribunal held as below:

“47. The learned Departmental Representative pleaded before us that entrance fee is a revenue receipt in the light of the decision of the Patna High Court in the case of United Club (supra) and so, the entire membership fee which is on par with such entrance fee has to be taxed in one year. This contention has to be rejected for more than one reason. Firstly, strictly speaking, there is no entrance fee as such in the present case. Secondly, the jurisdictional High Court has held in the case of Secunderabad Club(150 ITR 49) that the entrance fee is a capital receipt. Even as per accounting standard 9, entrance fee is normally capitalized. More basically, the issue in the present case is not whether the membership fee is capital receipt or revenue receipt. The assessee has not disputed that it is a revenue receipt. The only claim of the assessee is that, even if it is a revenue receipt, it cannot be brought



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to tax in one year and it should be recognized on a rational basis or time basis in the light of accounting standard 9. We see no reason to reject this claim as there is continuing liability to render services either free or at a reduced rate.

48. If the entire membership fee collected is shown in the present assessment year, there would be substantial deficit in future years, when the assessee has to incur expenditure for the provision of various services to the members without matching receipts. This would give a totally distorted picture of the working results of the assessee. While substantial profits will be taxed in the year under appeal, there will be substantial losses in" subsequent years. The revenue may seek such result, but we see no reason to allow it. (Emphasis added)

.....

50. Before we conclude, we may mention that there appears to be some incongruity in item 6 of the appendix to the accounting standard 9, which we have extracted hereinabove While it states that entrance fee is generally capitalised, it proceeds to state that when membership fee permits only membership and all other services are paid for separately, it should be recognized when received. If the membership fee permits only membership it should be on par with entrance fee and so there seems to be some contradiction between the two statements. But the general import of item 6 of the appendix and more particularly of the accounting standard 9 itself is clear. The import of item 6 has to be seen in the light of other illustrations given under other headings of the appendix like installation fees, advertising and insurance agency commission, financial service commissions, admission fees, tuition fees, etc. Reading them all together, the principle is that when service is provided on a continuing basis and the cost relating to the service falls in a different year, revenue should be recognized on a time basis. Going by this general import of item 6 in the appendix



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and the wording in the body of the accounting standard 9 itself, it is clear that the assessee conformed to the accounting standard 9 and as such, the book results deserve to be accepted.

51. In the light of the foregoing discussion, we are of the view that the assessing officer is not justified in bringing to tax the entire membership fee collected to tax in the year under appeal. We accordingly set aside the impugned orders of the Revenue authorities on this aspect and direct the assessing officer to modify the assessment accordingly.”

**10.** The order of the ITAT was challenged before the Andhra Pradesh High Court. On appeal by the Revenue, in ***Commissioner of Income Tax-II, Hyderabad vs. M/s.Treasure Island Pvt Ltd., I.T.T.A.No.241 of 2012, dated 10<sup>th</sup> July 2013***, the High Court dismissed their appeal of the Revenue, making the following observation:

*This appeal is sought to be filed against the judgment and order of the Learned Tribunal dated 30.07.2007 in relation to the assessment year 2002-2003, on the following suggested question of law:*

*Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the entire membership fee collected in the year under consideration cannot be taxed in that year and has to be deferred to future years?*

*11. We have heard the learned counsel for the appellant and gone through the impugned judgment and order. The learned Tribunal has decided the matter*



*following earlier decision of the Tribunal in the assessee's own case in ITA Nos. 1189 and 1190/Hyd/04 for the assessment years 1997-1998 and 2001-2002. It is not the case of the Revenue that the orders passed earlier were appealed and the same have been reversed. In view of the consistent findings of the learned Tribunal, which are accepted by the parties, we do not see any reason to interfere with the impugned judgment and order. Consequently, we dismissed the appeal. No order as to costs."*

11. Likewise, when an identical issue came up for consideration before the Gujarat High Court in ***Commissioner of Income-Tax v. Winner Business Link (P) Ltd*** reported in [2015] 55 Taxmann.com 468 (Gujarat), the Gujarat High Court following the judgment of the Andhra Pradesh High Court in ***Commissioner of Income-Tax, Hyderabad vs. Treasure Island (P) Ltd*** and the judgment of the Delhi High Court in ***Commissioner of Income Tax v. Dinesh Kumar Goel*** [2011] 197 Taxman 375 (Delhi), held that if the contention of the Revenue is accepted, it would be distorted picture of the working results of the assessee. The judgment of the Gujarat High Court in Winner Business Link (P) Ltd case was challenged before the Hon'ble Supreme Court by the Revenue. The Hon'ble Supreme Court on 03.10.2016 dismissed the appeal filed by the Revenue, upholding the decision of the Gujarat High Court in ***Commissioner of Income-Tax vs. Winner Business Link (P) Ltd.***



12. Thus, the decision of the Andhra Pradesh High Court rendered in *Treasure Island (P) Ltd.*, the decision of Delhi High Court in ***Commissioner of Income Tax vs. Dinesh Kumar Goel*** and the decision of Gujarat High Court in ***Commissioner of Income-Tax v. Winner Business Link (P) Ltd.***, have become the law of land. Hence, in our considered view, the ITAT order and reasoning thereat is the most appropriate and legally sustainable. The said view has received the seal of approval by the Hon'ble Supreme Court in ***Commissioner of Income-Tax v. Winner Business Link (P) Ltd.*** Therefore, the appeal filed by the Revenue is dismissed and the substantial questions of law are held in affirmative, in favour of the assessee.

13. As a result, the ***Tax Case (Appeal) No.648 of 2013 stands dismissed.***

There shall be no order as to costs.

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

Neutral Citation :Yes/No.  
Index :Yes/No.  
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To,  
The Assistant Commissioner of Income-tax,  
Company Circle-VI(4),  
Chennai 600 034.



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T.C.(Appeal).No.648 of 2013



**Dr.G.JAYACHANDRAN, J.**  
**and**  
**SHAMIM AHMED, J.**  
bsm

Pre-delivery Judgment made in  
T.C.(Appeal)No.648 of 2013

28.04.2026