

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI**  
**BEFORE SHRI PRAMOD KUMAR, VP AND SHRI SAKTIJIT DEY, JM**

ITA Nos. 4611 to 4613/Mum/2018  
(Assessment Years: 2011-12, 2013-14 & 2012-13)

ACIT 2(3)(2), R. No. 552, 5 <sup>th</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai – 400 020	Vs.	M/s. Sterling Holiday Resorts Ltd. (Formerly M/s. Sterling Holiday Resorts (India) Ltd.) Thomas Cook Building, Dr. D. N. Road, Fort, Mumbai-400 001
PAN/GIR No. AADCS 4841 D		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Appellant by</b>	:	Mrs. Jacinta Zimik Vashai
<b>Respondent by</b>	:	Shri M. Viswanathan
<b>Date of Hearing</b>	:	13.11.2019
<b>Date of Pronouncement</b>	:	20.11.2019

ORDER

Per Saktijit Dey, JM:

The aforesaid appeals by the Revenue arise out of three separate orders of the learned Commissioner of Income Tax (Appeals)-15, Chennai (‘ld.CIT(A) for short) dated 26.04.2018 and pertains to the assessment year (A.Y.) 2011-12, 2012-13 and 2013-14. The first common issue raised in all these appeals relate to deletion of addition made on account of deferred income.

2. Briefly the facts are, the assessee, a resident company, is engaged in the business of running resorts and hotels. The assessee has devised the concept of time shares wherein a person acquiring membership of such time share is assured of stay facility in the resorts/hotels over the period of membership. In this regard, the

company enters into a contract with the member on receipt of membership fee and as per the terms of the contract renders various services and incurs expenditure for fulfilling the obligations as per the terms of the contract. To fulfill its obligation under the terms of the contract, the assessee is required to maintain resorts as per committed quality level which involves replacement/renovation/upgradation of the assets at various stages during the tenure of the contract. This also requires incurring other expenses including marketing and sales related expenditure. The membership fee for the time share units is collected either in full upfront or on deferred payment basis. As per the accounting principle consistently followed by the assessee, out of the total membership fee received during the year, the amount reasonably attributable towards direct cost required to sale time share units, which is revised periodically, is recognized as income in the year in which the purchaser of the time share unit becomes a member and the balance amount representing advance subscription towards customer facilities is recognized as time share income in equal proportion over a period for which the holiday facilities are provided, commencing from the year in which the member becomes entitled to benefit of membership under this scheme. By following the aforesaid revenue recognition policy, in the return of income filed for the impugned Assessment Years, the assessee offered income of Rs.4,98,23,067/- being 45% of the total amount received of Rs.10,79,94,361/-. The balance 55% translating to income of Rs.6,08,94,861/- was deferred to future years. In course of the assessment proceedings, the Assessing Officer noticing the aforesaid revenue recognition method adopted by the assessee called upon the assessee to explain why

the entire amount received during the year should not be treated as income. Though, the assessee furnished its reply objecting to the proposed addition, however, the A.O. rejecting the submission of the assessee proceeded to treat the entire amount of Rs.10,79,94,361/- as income of the assessee for the year under consideration. While doing so, the A.O. also did not follow the decision of the Tribunal on identical issue in assessee's own case in A.Ys. 2002-03, 2006-07 and 2008-09 on the plea that the department has contested the decision of the Tribunal by filing appeals before the Hon'ble High Court. The assessee having offered the amount of Rs.4,98,23,061/- as income, the balance amount of Rs.6,08,94,861/- was added back to the income of the assessee in A.Y. 2011-12.

3. Similar additions were also made in the other Assessment Years in appeal. Being aggrieved with the aforesaid additions made by the A.O., the assessee preferred appeals before Id. CIT(A).

4. Having taken note of the fact that in assessee's own case, in A.Ys. 2002-03 to 2010-11, the Tribunal has decided the issue in favour of the assessee, Id. CIT(A) followed the same and deleted the additions made by the A.O.

5. We have considered rival submissions and perused the materials on record. From the facts on record, it is evident that as per the consistently followed accounting method and revenue recognition policy, the assessee offers reasonably attributable time share income in the year in which the purchaser of time share units becomes a

member and the balance amount of the membership fee, though, is recognized as time share income, however, it is offered as income in equal proportion over a period for which the holiday facilities are provided to the member commencing from the year in which the member is entitled to benefits of membership under the scheme. Accordingly, the assessee offers 45% as membership fee as income and defers the balance 55% to subsequent years. This method of revenue recognition is being followed by the assessee consistently from past several years. It is also evident, whether the deferred income is to be treated as income of the assessee in the year of receipt, is a subject matter of dispute in the past years and the Tribunal while deciding the issue in AYs. 2002-03, 2006-07, 2007-08 and 2008-09 in ITA No. 471/Mds/2012 and others vide order dated 30.08.2012, after following that the decision of Chennai Special Bench in the case of *M/s. Mahindra Holiday & Resorts (India) Limited* (supra) in ITA No. 2412 to 2416/Mum/2005 dated 26.05.2010 has deleted the addition made by the A.O. on account of time share income. Same view was expressed by the Tribunal while deciding Revenue's appeal in assessee's own case in A.Y. 2010-11 in ITA No. 2956/Mds/2016 dated 05.05.2017. As could be seen, the A.O. has made the addition by not applying the decisions of the Tribunal simply on the plea that the department has not accepted the decision of the Tribunal. In our view, this cannot be a valid reason for not following the decision of the Tribunal rendered in the assessee's own case. In our considered opinion, the issue at hand stands fully covered by the decision of the Tribunal in assessee's own case as referred to above. No contrary decision has been brought to our notice by the Id. Departmental Representative (Id.

DR for short). Accordingly, respectfully following the decision of the co-ordinate bench in assessee's own case as referred above, we uphold the decision of Id. CIT(A) on this issue. Grounds raised are dismissed.

6. The next common issue in these appeals relate to the deletion of disallowance of Employee Stock Option Plan (ESOP) expense/cost. In the course of the assessment proceedings, the A.O. noticed that the assessee has debited ESOP expenses to the profit and loss account. When the A.O. called upon the assessee to justify the claim, the assessee relied upon the decision of Hon'ble Madras High Court in the case of *PVP Ventures vs. CIT* (in TC(A) No. 1023 of 2005 vide order dated 19.06.2012). The A.O. however did not accept the claim of the assessee. He observed, the assessee has amortized the ESOP cost in contravention to SEBI guidelines. Further, he observed, in case of *Ranbaxy Laboratories ltd Vs. Addl. CIT* (2009) (124 TTJ (Del) 771) and *VIP Industries Ltd. VS DCIT* (2010-TIOL-654- ITAT-Mum), the Tribunal has upheld the disallowance of ESOP expenditure on the reasoning that the issue of shares at a price below market price does not result in incurring of any expenditure. Rather it results in short receipt of premium which the assessee is otherwise entitled to. Accordingly, he disallowed the ESOP expenses debited to profit and loss account.

7. Being aggrieved, the assessee preferred appeals before Id. CIT(A).

8. Having found that the issue is covered by the decision of Hon'ble Madras High Court in the case of *PVP Ventures* (supra), Id. CIT(A) deleted the disallowances made by the A.O.

9. We have considered rival submissions and perused the materials on record. It is evident, the ESOP expenditure debited to the profit and loss account represents the difference between the fair market value and the issue price of the stocks. It is also evident that the assessee has provided for such cost in terms with SEBI guidelines. The Hon'ble Madras High Court in the case of *PVP Ventures* (supra) has allowed similar expenditure claimed by the assessee. In fact, in case of *Biocon Limited vs. Dy. CIT* in ITA No. 248/Bang/2010 vide order dated 16.07.2013 the ITAT (Special Bench), Bangalore has also allowed ESOP expenditure/cost. Respectfully following the aforesaid judicial precedents, we uphold the decision of Id. CIT(A). Accordingly, grounds are dismissed.

10. In the result, all the appeals are dismissed.

*Order pronounced in the open court on 20.11.2019*

Sd/-

(Pramod Kumar)  
Vice President

Mumbai; Dated : 20.11.2019

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

Sd/-

(Saktijit Dey)  
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai