

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1561/Chny/2024
निर्धारण वर्ष /Assessment Year: 2016-17

The Dy. Commissioner of
Income Tax,
Large Taxpayer Unit,
Circle-1(i/c), Chennai.

Vs. M/s. Mahindra Holidays & Resorts
India Ltd.,
Mahindra Towers, 2nd Floor,
17/18, Pattulos Road,
Chennai – 600 002.
[PAN: AAACM 6469L]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee by

: Shri Vikram Vijayaraghavan,
Advocate

प्रत्यर्थी की ओर से /Revenue by

: Shri Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing

: 09.10.2024

घोषणा की तारीख /Date of Pronouncement

: 03.01.2025

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid appeal filed by the Revenue for Assessment Year (AY) 2016-17 arises out of the order of Learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [hereinafter "CIT(A)"] dated 25.09.2023 in the matter of assessment framed by the Assessing Officer [AO] u/s. 143(3) of the Income-tax Act,1961 (hereinafter "the Act") on 04.12.2018.

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2. There is a delay of 170 days in filing the appeal by the Revenue. The Revenue has filed condonation petition stating the reasons for delay in filing the appeal. We have considered the petition of delay in filing the appeal and satisfied that there was sufficient cause for not filing the appeal within the prescribed time limit. Hence, the delay is condoned accordingly.

4. Grounds No.1 & 5 are general in nature therefore, no adjudication is required for the same.

5. Ground No.2 is against granting relief by Ld CIT(A) on taxing entire receipt from members by the A.O , without appreciating that there is no basis for treating 60% of the membership fees as revenue in the year of enrollment for membership and treating the balance 40% as income spread over the tenure of the contract.

5.1 The assessee is engaged in the business of holiday time sharing and has offered 60% of such receipts in the current year and remaining 40% over the membership period. The A.O has held the entire membership fee to be taxable in the year of receipt. The Ld.

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CIT(A) has deleted the addition as the issue has been decided in favour of assessee by the Spl. Bench in assessee's own case for A.Y 1989-90 to 2002-03 in ITA No 2412 to 2416/Mds/2005 reported in [2010] 39 SOT 438 (Chennai)(SB), and Co-ordinate bench of this Tribunal for A.Ys 2009-10 to 2015-16.

5.2 The Ld. D.R supporting the order of A.O has submitted that A.O has correctly assessed the total receipt as there is no basis for accounting income in 60:40 ratio. The Authorized Representative (A.R) of the assessee on the other had submitted that the issue is squarely covered by the decision of Spl. Bench of this Tribunal, supra, and coordinate bench in assessee's own case in earlier years, therefore ground should be dismissed.

5.3 We have heard the rival submissions, and perused the materials available on record. We find that the issue is covered by the decision of Spl. Bench in assessee's own case in ITA No 2412 to 2416/Mds/2005 for A.Y. 1998-to 2002-03 and Co-ordinate bench decision ITA No943&944/chny/2018 & 1089/chny/2018 for A.Y. 2011-12 to 2014-15 . We accordingly find no infirmity in the order of Ld CIT(A) and dismiss this ground of appeal of revenue.

6. Ground No.3 is against granting relief on disallowances of capital expenditure of Rs. 15,01,92,118/- for improvement and development of leasehold premises claimed as revenue expenditure.

6.1 The assessee company has debited an amount of Rs.16,68,80,131/- under the head repair of resorts . The assessing officer held that the expenditure incurred is for setting up new resorts and for enduring benefit and therefore capital expenditure. The A.O therefore, disallowed the expenditure after allowing the depreciation at the rate of 10% . The Ld. CIT(A) held that similar disallowances was made in A.Y 2009-10 and Hon'ble ITAT in ITA No 1227/mds/2013 has decided the issue, therefore directed A.O to allow the claim as per decision of Hon'ble Tribunal in assessee's case for A.Y 2009-10 on same facts.

6.2 We have heard the rival submission and perusal the material on record. The Ld CIT(A) has directed A.O to follow direction ITAT in A.Y 2008-09 as facts are identical. We do not find any infirmity in the order of Ld CIT(A) order, A.O is therefore directed to allow the claim as per direction given by the Bench in A.Y 2009-10. The ground of appeal is dismissed accordingly.

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7. Ground No.3 is regarding 40(a)(i) of the Act disallowance on payment made to Heritage Bird (M) Sdn, Bhd towards maintenance fee for resort in Malaysia for maintaining of properties located in Malaysia and Thailand outside India without deducting tax.

7.1 The assessee has entered into an agreement with company in Malaysia viz Heritage Bird(M) Sdn, Bhd for purchase of time share weeks for specified period and to pay management fee for maintaining service apartment in Malaysia. The A.O has held that assessee was liable to deduct TDS on payment of such fee as it is taxable in India u/s. 9(1)(vii) of the Act as fees for technical services. The A.O therefore has made disallowance u/s. 40(a)(i) of the Act. The Ld. CIT(A) relying on the decision of Tribunal in assessee's own case for A.Y 2008-09 in ITA no 1764/Mds/2011 has allowed the appeal subject to filing copy of TRC of Malaysian entity Heritage Bird and declaration of no PE.

7.2. We have heard the rival submissions, and perused the materials available on record. The issue is covered in favour of assessee by the order of Co-ordinate Bench of this Tribunal in assessee's own case,

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supra. We therefore, find no infirmity in the order of Ld. CIT(A) and hence, dismiss this ground of appeal of revenue.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 03rd January, 2025.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)

न्यायिक सदस्य / Judicial Member

Sd/-
(जगदीश)
(Jagadish)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 03rd January, 2025.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF