

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 844/Mum/2024
(Assessment Year: 2018-19)**

Sterling Holiday Resorts Ltd 236, 4 th Floor, Purva Primus, Okkiyampettai, Old Mahabalipuram Road, Thoraipakkam, Chennai, Tamil Nadu – 600 097.	Vs.	DCIT – Circle 2(3)(1) Room No. 552, 5 th Floor, Aayakar Bhavan, MK Road, New Marine Lines, Mumbai – 400 020
PAN/GIR No. AABCT7079G		
(Applicant)		(Respondent)

**ITA No. 940/Mum/2024
(Assessment Year: 2018-19)**

ACIT – Circle 2(3)(1) Room No. 552, 5 th Floor, Aayakar Bhavan, MK Road, New Marine Lines, Mumbai – 400 020	Vs.	Sterling Holiday Resorts Ltd 236, 4 th Floor, Purva Primus, Okkiyampettai, Old Mahabalipuram Road, Thoraipakkam, Chennai, Tamil Nadu – 600 097.
PAN/GIR No. AABCT7079G		
(Applicant)		(Respondent)

Assessee by	Shri K.K. Ved, & Ms. Riya Shah
Revenue by	Shri Manish Sareen, CIT(DR)

Date of Hearing	24.03.2025
Date of Pronouncement	04.04.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeals have been filed by the assessee as well as revenue challenging the impugned order 29.12.2023 passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre, Delhi / CIT(A) for the A.Y 2018-19. First of all we take up assessee appeal in ITA No. 844/Mum/2024.

ITA No. 844/Mum/2024, A.Y 2018-19

The appellant company objects to the order passed under section 250 of the Income-tax Act, 1961 ('the Act') dated 29 December 2023 passed by the Learned Commissioner of Income- tax (Appeals) / National Faceless Appeal Centre, herein after referred to as Ld. CIT(A)' for the captioned assessment year on the following grounds:

1. Ground No. 1 - General

The Ld. CIT(A) has erred in confirming the actions of the Learned Assessing Officer (Ld. AO) and sustain the following additions or disallowance made in the impugned assessment order:

Disallowance of Employee Stock Option Plan ("ESOP") expense aggregating to Rs. 54,53,100/-;

Addition of Rs. 7,48,95,744/- on account of re-computation of long-term capital gain and the consequent disallowance of long-term capital loss of Rs.4,08,40,800/- as computed by the appellant company on sale of Kodaikanal Land.

2. Ground No. 2 - Disallowance of Employee Stock Option Plan expense aggregating to Rs. 54,53,100/-

2.1. Based on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld.

AO in disallowing the employee stock option plan expense of Rs. 54,53,100/- debited to profit and loss account.

2.2. The Ld. CIT(A) / Ld. AO erred in not appreciating that the ESOP discount has been recognized over the vesting period of the ESOP in accordance with the guidelines and accounting principles.

2.3. The Ld. CIT(A) / Ld. AO erred in not following the decision of the Hon'ble Mumbai ITAT dated 20 November 2019 in the appellant company's own case.

2.4. Further, the Ld. CIT(A) / Ld. AO has erred in not appreciating the fact that the ESOP discount is a part of the remuneration of the employees and the same is wholly and exclusively Incurred for the purpose of the business of the appellant company.

2.5. The Ld. CIT(A) / Ld. AO erred in relying on circular 09/2007 without appreciating that the ESOP granted in the appellant's case were of the holding company i.e Thomas Cook (India) Limited.

2.6. On the facts and in the circumstances of the case and in law, the appellant company prays that impugned action of the Ld. AO of disallowance of ESOP expense ought to be deleted.

3. Ground No. 3 Disallowance of long-term capital loss of Rs. 4,08,40,800/- and re- computing the long-term capital gain of Rs. 7,48,95,744/- on sale of Kodaikanal land

3.1. Based on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of Ld. AO of disallowing the long-term capital loss of Rs. 4,08,40,800/- as computed by the appellant company and re-computing long-term capital gain of Rs. 7,48,95,744/- on sale of land situated at Kodaikanal.

3.2. The Ld. CIT(A) / Ld. AO erred in not appreciating the fact that the appellant company had exercised the option

under section 55(2)(b) of the Act and substituted fair market value of land as on 1 April 2001 as cost of acquisition.

3.3. Based on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in ignoring the valuation report furnished during the course of proceedings and relying on the circle rate from competent authority for valuation of cost of acquisition.

3.4. The Ld. CIT(A) / Ld. AO has erred in not follow the provisions of section 48 read with section 55(2)(b) of the Act which provides for indexing the actual cost or fair market value as on 1 April 2001 whichever is higher should be considered.

3.5. On the facts and in the circumstances of the case and in law, the appellant company prays that impugned action of the Ld. AO of re-computing the capital gain against the capital loss as determined by the appellant company ought to be deleted.

Ground No. 4-General

The appellant company craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.

2. *Ground of appeal No. 1 raised by the assessee general in nature needs no adjudication, therefore stands dismissed.*

3. *Ground No. 2 raised by the assessee relates to confirming the action of AO in making disallowance of ESOP (Employees Stock Option Plan) expenses.*

4. *At the very outset, Ld. AR submitted that the said issue is covered in favour of assessee in assessee's own*

case for A.Y 2011-12 to 2013-14 in **ITA No. 4611 to 4613/Mum/2018**.

5. Apart from the above assessee also placed reliance on other decisions of Coordinate Bench of Tribunal and that of affirmed by the Karnataka High Court in the case of **Bicon Ltd. Vs. DCIT, [2020] 430 ITR 151 (Kar)**.

6. On the contrary, Ld. DR relied on the orders of the revenue authority.

7. We have heard the counsels for both the parties, perused the material placed on record, judgements cited before us and orders passed by the revenue authorities. From the records, we found that the identical issue already been decided by the **Coordinate Bench of ITAT in assessee's own case for the A.Y 2011-12 to 2013-14**, wherein the operative portion held as under:

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 itd Vs. Addi 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.

8. Taking into considering the facts of the above case as there are no material change in the facts and circumstances of the present case with that of the above mentioned cases therefore while adhering to the principles of judicial consistency we also give the same direction, and direct the AO to delete the disallowance, accordingly, the ground raised by the assessee is *allowed*.

9. *Ground No.3*, this ground raised by the assessee relates to disallowance of long term capital loss and computing of long term capital gain on the sale of Kodaikanal land.

10. We have heard the counsels for both the parties, perused the material placed on record, judgements cited before us and orders passed by the revenue authorities. From the records we noticed that during the year under consideration the assessee claimed capital loss of Rs. 4,08,40,800/- and the said loss was incurred on sale of property at Kodaikanal. The land was purchased for Rs. 4,62,000/- on 28.03.1987 and its fair market value as per valuation was determined at 4,38,90,000/- as on 01.04.1981. The indexed cost of acquisition has been worked out at Rs. 11,93,80,800/- during the F.Y 2017-18. However, the assessee was asked to furnish collector rate of this property as on 01.04.2001, although the assessee sought time but could not submit the same. Since the matter was getting time barred. Therefore the AO concluded the indexed cost and as per the calculation net LTCG was Rs. 7,48,95,744/-.

11. Be that as it may on the one hand assessee placed reliance upon valuation report for assessing fair market

value of the land as on 01.04.2001 and computed long term capital loss. But the fact remains even after availing opportunities the assessee could not place on record the collector rate as on 01.01.2001 determining the actual long term capital gain / long term capital loss.

12. In our view the AO being the investigator is well equipped with powers to determine fair market value as on 01.04.2001 by calling the collector rate of land. Hence in our view the interest of justice would only be met if the matter is restored back to the file of Ld. CIT(A) for deciding this issue again on merits after calling the collector / circle rate of the land in question and providing opportunity to both the parties. Therefore with the above direction the matter is restored back to the file of Ld. CIT(A) in terms indicated above.

13. Before parting, we make it clear that our decision to restore the matter back to the file of the Ld. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the Ld. CIT(A) independently in accordance with law.

14. In the result the appeal filed by the assessee stands partly allowed for statistical purposes.

ITA 940/Mum/2024.

The revenue has raised the following grounds of appeal:

1. *"The L.d. CIT(A) erred in holding that 40% of income is to be deferred for the 33 years when there is no concept of "deferred income" under the IT Act?"*

2 *The Ld. CIT(A) erred in concluding that 40% of receipts did not accrue as income during the year ignoring the fact that there is no provision to refund even part of collections?*

3. *The Ld. CIT(A) erred in holding that 40% of receipts is deferred for maintenance of property in future years when assessee is collecting Annual Maintenance Charges separately from all the members for each year and whether the order of CIT(A) is perverse on this aspect?*

4. *The L.d. CIT(A) is erred in allowing the claim of the assessee relying on AS-9 even when such accounting standards stipulates recognition of income when sales takes place?*

5. *The Ld. CIT(A) erred in accepting the plea of the assessee that 40% of receipts are deferred for future expenses towards maintenance when, the Balance Sheet does not show any provision made towards future liability for such maintenance?*

6. *The Ld. CIT(A) erred in deferring income on the plea of unquantified future liabilities ignoring the fact that all claims made by the assessee towards maintenance of property in subsequent years were allowed as deduction?*

7. *"The appellant craves the leave to add, amend, alter and/ or delete any of the grounds of appeal as above."*

15. The only ground raised by the revenue is challenging the order of Ld.CIT(A) in deletion of additions made on account of deffered income.

16. We have heard the counsels for both the parties, perused the material placed on record, judgemnets cited before us and orders passed by the revenue authorities. From the records we noticed that the said issue has already been decided in favor of the assessee in its own case for A.Y 2011-12 to 2013-14 in **ITA No. 4611 to 4613/Mum/2018**.

17. Apart from above, assessee also placed reliance on other decisions of Coordinate Special Bench of Tribunal in the case of **DCIT Vs. Mahindra Holiday and Resorts (Ind) Ltd, [2010] 39 SOT 438 (Chennai-Trib)**

18. On the contrary, Ld. DR relied on the orders of the revenue authority.

19. We have heard the counsels for both the parties, perused the material placed on record, judgemnets cited before us and orders passed by the revenue authorities. From the records, we found that the identical issue has already been decided by the Coordinate Bench of ITAT in

assessee's own case for the A.Y 2011-12 to 2013-14,
wherein the operative portion held as under:

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.

20. Taking into consideration the facts of the above case and also considering that there are no material change in the facts and circumstances of the present case with that of the above mentioned cases therefore while ad-hearing to the principles of judicial consistency we uphold the decision of Ld. CIT(A) and accordingly, the ground raised by the revenue is dismissed.

21. In the result the appeal filed by the assessee stands partly allowed for statistical purposes and appeal filed by the revenue stands dismissed.

Order pronounced in the open court on 04.04.2025.

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 04/04/2025

KRK, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai