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Order QR

TCA.No.433 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-10-2026

CORAM

**THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE S.RAVEEKUMAR**

TCA.No.433 of 2013
CNR: {HCMA010524722013}



Case QR

The Commissioner of Income Tax,
Chennai.

..Appellant

Vs

M/s.Mahindra Holidays and Resorts India Ltd.,
Mahindra Towers, II Floor,
17-18, Pattullos Road,
Chennai – 600 002.

..Respondent

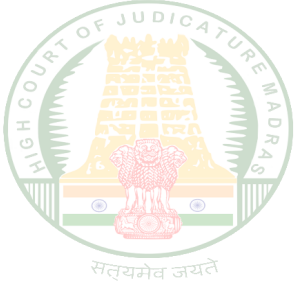
PRAYER: Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai dated 17.10.2012 passed in I.T.A.No.1616/Mds/2011.

For Appellant:

Mrs.V.Pushpa,
Senior Standing Counsel

For Respondent:

Mr.R.Vijayaraghavan
for M/S.Subbaraya Aiyar Padmanabhan



JUDGMENT
(Delivered by Dr.Anita Sumanth, J.)

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The substantial questions of law that arise from the order of the Income Tax Appellate Tribunal (in short ‘Tribunal’) for the assessment year 2008-2009 are as follows:-

“1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the Membership fee received from time shareholders amounting to Rs.158,43,81,853/- is to be deleted?

2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that for disallowance of expenditure made on purchase of software, Section 40(a) (ia) would not apply and therefore the provisions of Section 194J was not attracted?

3. Whether the word “payable” includes the word “paid” while dealing with Section 40(a)(ia) of the Income Tax Act?”

2. We have heard the submissions of Mrs.V.Pushpa, learned Senior Standing Counsel for the appellant/Department and Mr.R.Vijayaraghavan for the respondent/assessee.

3. Both learned counsel accede to the position that the first substantial question is to be decided in favour of the assessee and against the Department following a decision of this Court in *Commissioner of Income-tax – LTU vs. Mahindra Holidays and Resorts (India) Ltd.* [(2026) 186 taxmann.com 146], where the identical question had been decided adverse to the Department. The



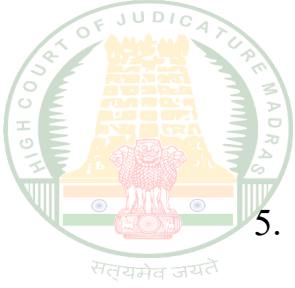
Division Bench has encapsulated the facts at paragraph 18 as follows:

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“18.The facts of the case is that the assessee company is engaged in the business of providing discount cards to the members on payment of prescribed fees called us membership fees. Being one-time fees and non-refundable valid for specific period from one to thirty years was apportioned over the entire period of their membership. This was not accepted by the Assessing Officer and the entire amount collected as membership fees in the accounting year was treated as receipt of thirty years. The Assessee Company preferred appeal before the Commissioner of Income-Tax (Appeals). The Appellate Authority allowed the assessee appeal and directed the Assessing Officer to follow the method of accounting regularly adopted by the assessee. The order of the Appellate Authority was challenged by the Revenue before the Tribunal. The said appeal was dismissed by the Tribunal confirmed the order of the Appellate Authority, Thereafter, when this matter came up for consideration before the Gujarat High Court in Winner Business Link (supra), one of the substantial questions of law framed was:-

Whether the Appellate Tribunal was right in law and on facts in accepting the method of accounting followed by the assessee ignoring the fact that during the regular assessment proceedings for A.Y.1997-98, the method of accounting followed by the asseessee was rejected by the Assessing Officer?”

4. Following the ratio of various Benches including Gujarat High Court in *CIT vs. Winner Business Link (P) Ltd.* [(2015) 55 taxmann.com 468], that was upheld by the Hon’ble Supreme Court on 03.10.2026, the issue was answered against the Department. Hence, the substantial question of law No.1 is answered in favour of the assessee.



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5. Substantial questions of law 2 and 3 that deal with the issue of non-deduction of tax under Section 40(a)(i) of the Income Tax Act (in short 'Act') in respect of expenditure on purchase of software are interconnected.

6. In the course of assessment, the assessing authority had sought particulars of payments made for purchase of software licences, both from resident and non-resident companies. He notes that tax had been deducted under Section 9(1)(vi) read with Section 195 of the Act in respect of purchases made from non-residents. However, no deductions had been made on purchases from residents. On the ground of parity between purchases made from domestic and foreign suppliers and invoking Section 194J of the Act, the assessing authority proceeds to disallow the entirety of the purchases under Section 40(a)(ia) of the Act.

7. An appeal before the Commissioner of Income Tax (Appeals) resulted in confirmation of the assessment as against which, the assessee filed a second appeal before the Tribunal. The order of the CIT (Appeals) had also proceeded on the basis of parity between the tax treatment to be accorded qua payments to domestic and foreign suppliers.

8. The Tribunal held in favour of the assessee based on the decision of the Special Bench of the Income Tax Appellate Tribunal in the case of *Merilyn*



Shipping and Transports vs. ACIT, the ratio of which has been reversed by the

Supreme Court in *Palam Gas Service vs. Commissioner of Income-tax* [(2017)

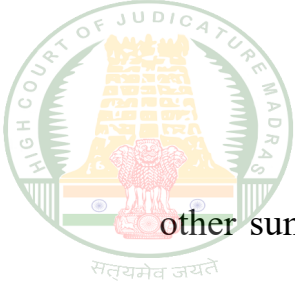
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9. The issue has thus not been decided on merits. However, since the assessment is of 2008-2009 vintage, all facts are on record, and what is to be decided is a pure question of law, we are not inclined to remit the matter back to the Tribunal for consideration.

10. The details of the purchases are set out in paragraph 8 of the assessment order as follows:-

14	IDS Software Pvt. Ltd., -Software licence renewal	359971
21	Veeras Infotech Private Ltd., - Software licence renewal	250282
22	Softecell Trade and Technologies P. Ltd.,- Software licence renewal	291925
23	Softecell Trade and Technologies P. Ltd.,- Software licence renewal	195372
26	Precision Infomatic (M) Pvt. Ltd., - Renewal of Microsoft licence	4079258
32	Precision Infomatic (M) Pvt. Ltd., - Renewal of Microsoft licence	5309252
	Total	10486060

11. Admittedly, the consideration has been paid towards renewal of software licences. Section 194J requires the assessee to deduct tax at source in respect of payments made for professional and technical services, royalty or any



other sum referred to in Clause (va) of Section 28. The term Royalty is to be understood in the context of the Explanation to Section 9(1)(vii) of the Act, that defines the term in the following manner:

“Explanation 2.—For the purposes of this clause, “royalty” means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head “Capital gains”) for-

(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;

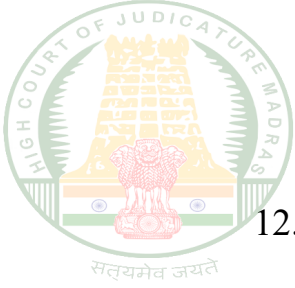
(iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;

(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill

(iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;]

(v) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films; or

(vi) the rendering of any services in connection with the activities referred to in sub-clauses (i) to [(iv), (iva) and] (v).”



12. It is only vide Explanation 4 to Section 9(1)(vii) inserted vide Finance Act, 2012, with effect from 01.06.1976, that consideration for licences have been brought within the ambit of the term 'Royalty'. Explanation 4 reads as follows:

“Explanation 4:- For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.”

13. The import of the above Explanation had been considered by the Supreme Court in *Engineering Analysis Centre of Excellence (P.) Ltd. vs. Commissioner of Income-tax* [(2021) 125 taxmann.com 42] in the context of taxability of licences under End-user Licence Agreement.

14. The argument advanced by the learned Additional Solicitor General that licences would fall within the ambit of 'Royalty' by virtue of the retrospective application of Explanation 4, was brushed away by the Supreme Court noting that it was 'ludicrous' that the amendment applied from 01.06.1976, as much of the technology referred to in that Explanation had itself been regulated by Parliament for the first time through the Cable Television Networks (Regulation) Act, 1995, nearly two decades after 1976. Explanation 4 was therefore held to operate only prospectively, and the inclusion of licences



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within the ambit of 'Royalty' would be operational only for the period post
01.04.2012.

15. We are also not of the considered view that the payments would be taxable merely for the reason that tax has been deducted under Section 40(a)(i) as the circumstances in which taxability have to be decided would have to be examined independently in each scenario, and in light of the applicable law.

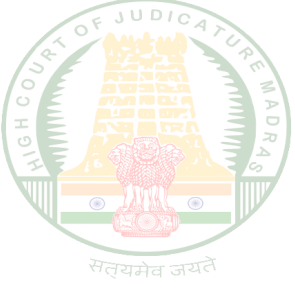
16.Substantial question No.2 is answered in favour of the assessee and substantial question No.3 is answered in favour of the Department.

17. This Tax Case (Appeal) is disposed of in the above terms. No costs.

(A.S.M.,J.) (S.R.K.,J.)
05-10-2026

Index: Yes
Speaking order
Neutral Citation: Yes

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