

Yum! Restaurants (Marketing) Private Limited v. Commissioner of Income Tax, Delhi

Civil Appeal No. 2847 of 2010

[2020] 11 SCR 136 | 2020-04-24

Whether the marketing subsidiary's advertising-fund arrangement satisfied mutuality, and whether its separate overriding-title argument should be determined in this appeal.

2(24) | 254(2)

Two-judge bench | A. M. Khanwilkar, J. | Dinesh Maheshwari, J.

Assessment years: 2001-02

01 FACTS OF THE CASE

The marketing company was a wholly owned subsidiary of Yum! Restaurants (India), formerly Tricon. Its approved purpose was to coordinate advertising, marketing and promotion for the parent and restaurant franchisees on a non-profit mutual basis. The government approval contemplated regular fixed-percentage contributions from both parent and franchisees. The later tripartite agreement, however, obligated franchisees to contribute 5% of revenues while leaving the parent's contributions to its sole discretion. The parent also controlled management (paragraphs 1-4 and 24-26).

The fund received money from Pepsi Foods, which was not a franchisee or a member with rights in the fund's surplus. The company returned nil income on mutuality grounds. The Assessing Officer, Commissioner (Appeals), Tribunal and Delhi High Court rejected that position; Rs. 44,44,002, the excess of income over expenditure for assessment year 2001-02, was in dispute (paragraphs 2 and 5-12).

The company alternatively asserted that the contributions were held under an overriding obligation or trust for advertising expenditure. The Commissioner (Appeals) had rejected that ground, the Tribunal had not dealt with it, and a section 254(2) application was stated to be pending when this appeal was heard (paragraphs 36-41).

Source: [reported judgment / paragraphs 1-13 / PDF pages 12, 13, 14, 15, 16, 17, 18, 19 / judicial text](#); [reported judgment / paragraphs 39-41 / PDF pages 33, 34 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

Drawing on Bankipur Club, Bangalore Club and the earlier authorities, the Court applied three mutuality conditions: identity between contributors and participants, an entity obedient to their common mandate, and the impossibility of members making profits from their own contributions to a fund confined to them. Identity is class-based; membership can change. The objection is an outsider participating in contributions or surplus without becoming subject to the same mutual rights and obligations (paragraphs 14-18).

Pepsi's contribution broke that identity. It had no franchise agreement or member entitlement to participate in or recover surplus. A possible indirect benefit from higher beverage sales under a separate supply arrangement did not substitute for membership rights in the common fund. Accepting member and non-member receipts in this same activity introduced commerciality into the arrangement (paragraphs 19-23).

The other conditions also failed. Actual operation, rather than incorporation or a non-profit label, controlled. The parent's overriding discretion over contributions and management differed materially from the franchisees' fixed liabilities. The Court recognised that every member need not contribute at every moment, but distinguished that from one member's all-pervasive power to refuse contributions and control others to their detriment (paragraphs 24-26).

The franchisees lacked an enforceable right to a surplus refund; any refund depended on Board approval. Their fixed 5% obligation was not automatically reduced by retained surplus, while the parent could benefit through royalties without a corresponding mandatory contribution. The contractual framework also disclaimed an implied trust and a specific spending obligation in favour of a particular franchisee. The Court found the operating structure inconsistent with the approved mutual mandate and rejected the analogy with genuinely mutual clubs (paragraphs 27-35).

On the distinct overriding-title plea, the Court recited the difference between income diverted before accrual and income applied after receipt. It did not finally apply that doctrine to dispose of the separate claim. The issue had not been framed or properly agitated in the High Court or Supreme Court appeal memoranda, and the Tribunal's omission was the subject of the stated pending rectification application. The Court left that route open without expressing a view on its tenability or result (paragraphs 36-41).

Source: [reported judgment / paragraphs 14-18 / PDF pages 19, 20, 21, 22, 23 / judicial text](#); [reported judgment / paragraphs 19-23 / PDF pages 23, 24, 25 / judicial text](#); [reported judgment / paragraphs 24-35 / PDF pages 25, 26, 27, 28, 29, 30, 31 / judicial text](#); [reported judgment / paragraphs 36-41 / PDF pages 32, 33, 34 / judicial text](#)

03 JUDICIAL DECISION

The questions before the Court were answered against the assessee on the mutuality claim, and the impugned High Court judgment was upheld. The appeal was disposed of with liberty to pursue rectification according to law on the separate overriding-title contention. No opinion was expressed on that application's maintainability or merits; the Tribunal was not directed to allow it. There was no order as to costs, and pending interlocutory applications were disposed of (paragraphs 41-42).

Source: [reported judgment / paragraphs 41-42 / PDF pages 34 / judicial text](#); [official signed judgment / paragraphs 40-42 / PDF pages 35, 36 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue on mutuality; assessee retained conditional procedural liberty on a separate contention

High Court judgment upheld; appeal disposed of with rectification liberty, without costs

Final rejection of mutuality for this arrangement; overriding-title claim and rectification tenability left open

No automatic exemption from a non-profit label or government approval, no ruling that all business-linked associations or clubs fail mutuality, and no final rejection or acceptance of the separate overriding-title claim.

Source: [official signed judgment / paragraphs 41-42 / PDF pages 35, 36 / judicial text](#)

05 AKHB REVIEW POINT

Map the complete fund relationship: who contributes, who qualifies as a member, who can benefit from or reclaim surplus, who controls management and whether any member can shift the burden to others. A commercial benefit under a separate contract is not a substitute for membership rights. Compare actual agreements and operations with any approval; an approval describing mutuality cannot establish facts that the operating arrangement contradicts.

Analyse mutuality and diversion by overriding title separately. Failure on mutuality does not turn the Court's recital of diversion principles into a final determination of the alternative claim. Preserve the expressly limited rectification liberty and verify its later outcome before reporting that route as successful, rejected or still pending today.

Source: [reported judgment / paragraphs 17-30 and 41-42 / PDF pages 22, 23, 24, 25, 26, 27, 28, 29, 34 / judicial text](#)

PROVISION-SPECIFIC SCOPE

1.

Section: 2(24)

Role: Income characterisation in the mutuality analysis, expressly discussed in paragraph 17

2.

Section: 254(2)

Role: Rectification route left open for a separate contention; maintainability and merits not determined

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

A. M. Khanwilkar, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(official signed judgment\)](#)

Identified source rendition: 36 PDF pages; SHA-256
dc5874a87dce7f39a422d0797b867897bfbfd9b5888d37134e41086f700bf292. Original bytes preserved.
One signed judgment on physical pages 1-36; no separate opinion or neighbouring case.
Cover, signatures, signed date, material reasoning and final disposition matched against the fully read
reported judicial text. No complete independent rereading of this separate rendition is claimed.

[Open cited source rendition](#)

SCR citation verified from the reported cover; no neutral citation inferred.

The Tribunal application was stated to be pending in 2020; this note does not certify its present status.;
The judgment paraphrases a separate Brand Fund for each franchisee in paragraph 20, while the
reproduced clause 2.2 describes funds by brand and allocation of franchisee payments. The note does not
silently resolve that wording variance or infer an account structure beyond the actual clause.; Some
reproduced passages use older Tricon/TRIM names and typographical variants. The actual parent,
assessee and Pepsi membership relationships are retained without treating every quoted wording as a
new factual finding.

STATUTORY SCOPE

Mutuality and income analysis for assessment year 2001-02; a stated pending section 254(2) application
concerning a separate overriding-title contention.

No current-law certification or automatic Income-tax Act, 2025 mapping.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive review of subsequent decisions, amendments or
implementation.

IDENTIFIED SOURCE LINKS

[official signed judgment - PDF pages: 36](#)

SHA-256: dc5874a87dce7f39a422d0797b867897bfbfd9b5888d37134e41086f700bf292

[reported judgment - PDF pages: 34](#)

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