Commissioner Of Income Tax Ltu vs M/S Mahindra Holidays & — Tax Case (Appeal) No. 1419/2010

Tax Case (Appeal) No.1419 of 2010 IN THE HIGH COURT OF JUDICATURE AT MADRAS Reserved On: 08.04.2026 Delivered On: 28.04.2026 CORAM THE HONOURABLE DR JUSTICE G. JAYACHANDRAN AND THE HONOURABLE MR.JUSTICE SHAMIM AHMED Tax Case (Appeal) No.1419 of 2010 Commissioner of Income Tax-LTU. Chennai. … Appellant vs. M/s.Mahindra Holidays and Resorts (India) Ltd., Mahindra Towers, II Floor, Chennai – 600 008. … Respondent Prayer: Appeal under of the Income Tax Act, 1961 against the order of Income Tax Appellate Tribunal, Chennai "C" Bench, Chennai, dated 06.07.2010 in I.T.A.No.1705/Mds/2008. For Appellant : M/s.V.Pushpa Senior Standing Counsel For Respondent : Mr.Arvind P.Datar, Senior Counsel, for Mr.Sandeep Bagmar & Mr.Rahul Unnikrishnan Page Nos.1/43 https://www.mhc.tn.gov.in/judis Tax Case (Appeal) No.1419 of 2010 JUDGMENT M/s.Mahindra Holidays & Resorts (India) Ltd., (MH&RIL in short) is engaged in business of time-share business. The time-share members are enrolled on payment of membership fees either in full upfront or in 12/24/36 monthly instalments. The members are allowed to occupy and to use the resort facilities for specific period each year over a period of 25 years or 33 years as per the terms of the contract.

5. As against the above order of the Commissioner of Income Tax (Appeal) dated 29.05.2008, the Revenue went before the ITAT on appeal. By the time, the said appeal taken up for consideration, the Appeals of the Revenue in I.T.A.Nos.2412 to 2416 of 2005 in respect of the Assessment Years 1998- 1999 to 2002-2003 heard and dismissed by Income Tax Appellate Tribunal, Page Nos.4/43 https://www.mhc.tn.gov.in/judis Case (Appeal) No.1419 of 2010 vide its order dated 26.05.2010. Therefore, the ITAT observing the said fact, passed the below order or dismissal. "3. We find that the same issue had come up before this Tribunal on Revenue's appeal for assessment years 1998-99 to 2002-03. We also find that the CIT (A) had relied on his own order for the earlier years and for the impugned assessment year as well. On Revenue's Appeal it was held by this Tribunal that the entire amount of time share membership fee receivable by the assessee at the time of enrolment of a member could not be charged to tax in the initial year and it had to be spread over in the ensuring years. Nothing was brought on record by the Id.D.R to take a different view for the impugned assessment year. Hence, we find no merit in the appeal of the Revenue. It is, therefore, dismissed."

6. The Revenue appeal under of the Income Tax Act, is before this Court for consideration. This Court has admitted the appeal for deciding the following substantial questions of law:- The assessee cannot rely upon AS-9 to postpone the incidence of taxation of the non-refundable Page Nos.8/43 https://www.mhc.tn.gov.in/judis Case (Appeal) No.1419 of 2010 membership fee, when the statutory charging provisions mandate taxation of income at the point of accrual or receipt. In support of this argument, the Learned Counsel relies on reported in [1997] 227 ITR 172 (SC). v) The assessee claim to defer income to cover future services costs for 25 or 33 years as the case may be, is essentially a provision for a contingent liability. The deferral is not sought against an ascertained present liability. For an hypothetical future costs which may or may not arise, deferred income concept will not apply. Under of the Income Tax Act, provisions made towards contingent liability are not allowable deductions. (reported in [1988] 172 ITR 321 (SC). (reported in [1991] 188 ITR 44 (SC). (reported in [2007] 289 ITR 167 (Ker).

8. Submission on behalf of the assessee-M/s.MH & RIL. i) In response to the above submission made on behalf of the Revenue, the Learned Senior Counsel for the assessee submitted that, the contentions of the revenue bristles with fundamental flaw in understanding and appreciating the terms of the time share agreement. It is incorrect to say that the membership fee is non-refundable. It is also equally incorrect to say, since for maintenance and other facility utilised by the member on his occupation of the resort, the members are charged separately by way of AMC and Utility fee, the membership fee is for the right to use the resort facilities and no other obligation tagged on the assessee, to apply the matching principle. > 3.1 The Member is entitled to enjoy any Week every year within the allotted Season in the specified Apartment in any of the notified Mahindra Resorts or Mahindra Associate Resorts during the Membership Period. > 3.2 Reservation: - The Member can avail the Early Bird Reservation, Assured Holiday Reservation or Regular Reservation for enjoyment of CMHU by giving request for Reservation in the prescribed format provided by MHRIL. The reservation will be done on a first - come - first served basis and subject to availability only. The minimum number of days that can be requested for enjoyment is 3 (three) in case of Purple and Red Seasons and 2 (two) in Case of White and Blue Seasons. Further, in any year, the Member is entitled to enjoy a maximum of 14 days in the allotted Season classification and the balance can be enjoyed only during a different season in the same year except in the case of Blue Season Members, who can use up to 21 days in the Blue Season. In case, MHRIL does not confirm Holiday as mentioned herein before, MHRIL shall provide alternate accommodation with or without kitchenette in any of the opted destinations during any of the periods requested for by the Member. In case MHRIL provides alternate accommodation without Kitchenette, MHRIL shall compensate the Member by providing standard complimentary break-fast every day during the period of Holiday. In case of default to provide alternate accommodation, MHRIL shall pay liquidated damages equivalent to 100% of the rent/tariff applicable for the first Holiday Period and the first Holiday destination requested for by the Member.

10. Thus from the above clause, it is obvious that the membership fees is collected for the assured occupation of the resort during the specified days in the year till the tenure of the agreement. Page Nos.16/43 https://www.mhc.tn.gov.in/judis Case (Appeal) No.1419 of 2010 The Clause 5 deals about the 'Payment', which reads as below: > 5.1 Cost of Membership: Cost of Membership consists Of Cost of Accommodation and Advance payment towards facilities (APF). The Cost of Membership shall be paid by the Member as per the price structure and Schedule of Payments fixed by MHRIL from time to time. > a) Cost of Accommodation: The Cost of Accommodation paid by the Member is exclusively towards accommodation and constitutes 40% of the total Cost of Membership. > b) Advance Payment towards Facilities (APF); The assessee Company has to ensure Page Nos.19/43 https://www.mhc.tn.gov.in/judis Case (Appeal) No.1419 of 2010 the compliance of accommodation requests. Therefore, this cannot be considered as contingent expenditure. The annual maintenance charge or the charge collected for the enjoyment of the facility while the members or his representative stay in the resort, cannot be interlinked with the receipt of the membership fees. > 12. On examination of the line of judgments cited by the Learned Counsels on either side, after excluding the judgments those which are less relevant, the march of law on deferred income and matching principle has evolved as below:- > (reported in [1959] 37 ITR 66 (SC): > "19. From these cases, there are deducible certain principles of a fundamental

character. The first is that capital expenditure cannot be attributed to revenue and vice versa. Secondly, it is equally clear that a payment in a lump sum does not necessarily make the payment a capital one. It may still possess revenue character in the same way as a series of payments. Thirdly, if there is a lump sum payment but there is no possibility of a recurrence, it is probably of a capital nature, though this is by no means a decisive test. Fourthly, if the payment of a lump sum closes the liability to make repeated and Page Nos.20/43 https://www.mhc.tn.gov.in/judis Case (Appeal) No.1419 of 2010 periodic payments in the future, it may generally be regarded as a payment of a revenue character Anglo- Persian Oil Co. Ltd. v. Firstly, strictly speaking, there is no entrance fee as such in the present case. Secondly, the jurisdictional High Court has held in the case of Secunderabad Club(150 ITR 49) that the entrance fee is a capital receipt. Even as per accounting standard 9, entrance fee is normally capitalized. More basically, the issue in the present case is not whether the membership fee is capital receipt or revenue receipt. The assessee has not disputed that it is a revenue receipt. The only claim of the assessee is that, even if it is a revenue receipt, it cannot be brought to tax in one year and it should be recognized on a rational basis or time basis in the light of accounting standard 9. We see no reason to reject this claim as there is continuing liability to render services either free or at a reduced rate. > 48. If the entire membership fee collected is shown in the present assessment year, there would be substantial deficit in future years, when the assessee has to incur expenditure for the provision of various services to the members without matching receipts. This would give a totally distorted picture of the working results of the assessee. While substantial profits will be taxed in the year under appeal, there will be substantial losses in" In view of the consistent findings of the learned Tribunal, which are accepted by the parties, we do not see any reason to interfere with the impugned judgment and order. > Consequently, we dismissed the appeal. No order as to costs." > (v) In reported in [1997] 225 ITR 746 (SC), the Hon'ble Supreme Court held as below: > "13. income charged to tax is the income that is received or is deemed to be received in India in the previous year relevant to the year for which assessment is made or on the income that accrues or arises or is deemed to accrue or arise in India during such year. The computation of such income is to be made in accordance with the method of accounting regularly employed by the assessee. It may be either the cash system where entries are made on the basis of actual receipts and actual outgoings or disbursements or it may be the Page Nos.27/43 https://www.mhc.tn.gov.in/judis Case (Appeal) No.1419 of 2010 mercantile system where entries are made on accrual basis, i.e., accrual of the right to receive payment and the accrual of the liability to disburse or pay. In [(1962) 46 ITR 144 (SC)] it has been laid down: > "….In the case of [(1959) 37 ITR 66 : AIR 1959 SC 1049] this Court considered the meaning of "expenditure" under of the Income Tax Act, 1922. The High Court was concerned with sums which were transferred by the Company to trustees to take out an annuity policy on the life of the managing director or the longest life policy in favour of the managing director and his wife. There was a provision in the policy for surrendering the annuity for a capital sum after giving notice. The payment by the Company to the trustees was contingent and the liability itself was contingent. The Court said that expenditure which is deductible for income tax purposes is one which is towards a liability actually existing at the time. Putting aside of money which may become expenditure on the happening of an event is not expenditure. Dealing with what is expenditure, this Court said (p. > (i) For an assessee maintaining his accounts on mercantile system, a liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted principles of commercial practice and accountancy. It is not as if such deduction is permissible only in case of amounts actually expended or paid; > (ii) Just as receipts, though not actual receipts but accrued due are brought in for income tax assessment, so also liabilities accrued due would be taken into account while working out the profits and gains of the business; > (iii) a condition subsequent, the fulfilment of which may result in the reduction or even extinction of the liability, would not have the effect of converting that liability into a contingent liability; and Alternatively, services are performed in more than a single act, and the services yet to be performed are so significant in relation to the transaction taken as a whole that performance cannot be deemed to have been completed until the execution of those acts. The completed service contract method is relevant to these patterns of performance and accordingly revenue is recognised when the sole or final act takes place and the service becomes chargeable." Paragraph 7 stipulates that revenue from service transaction can be recognized either by proportionate completion method or by the completed service contract method. The revenue is generally recognized when the service is performed. Proportionate completion method is a recognized accounting method, as per which revenue is recognized proportionately by reference to the performance of each Act.

22. Accordingly, the substantial questions of law are answered in negative, against the appellant/Revenue.

23. As a result, Case (Appeal).No.1419 of 2010 stands dismissed. There shall be no order as to costs. (Dr. G.JAYACHANDRAN, J.) & (SHAMIM AHMED, J.) 28-04-2026 Index :Yes. Neutral Citation :Yes. To,

1. The Income Tax Appellate Tribunal, Chennai. Page Nos.42/43 https://www.mhc.tn.gov.in/judis Case (Appeal) No.1419 of 2010 Dr. G.JAYACHANDRAN, J. & SHAMIM AHMED, J. bsm Pre-Delivery judgment made in Case (Appeal) No.1419 of 2010 28.04.2026 Page Nos.43/43 https://www.mhc.tn.gov.in/judis