Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.94 OF 2002

1. The Travel & Tourism Association of Goa,
having its registered office at 404, Raiyu
Chambers, Dr. Atmaram Borkar Road,
Panaji, through its Vice President,
Shri Gaurish Manohar Dhond,
major in age,
residing at Manoshanti Complex,
D. V. Road, Panaji Goa.

2. Mandovi Hotels Pvt. Ltd.,
a company duly registered under the Indian
Companies Act, 1956, having its registered
office at Panaji Goa, through its Director,
Shri Ramnath V. Keny, residing at Dona Paula, Goa.

3. Shri Ramnath Vaman Keny,
Citizen of India, shareholder and Director,
Mandovi Hotels Pvt. Ltd.,
residing at Dona Paula, Goa. .... Petitioners.

Versus

1. Union of India
(through the Standing Counsel for the
Union of India)

2. The Commissioner of Income Tax,
having his office at Aayakar Bhavan,
Pato, Panaji Goa.

3. The Joint Commissioner of Income Tax,

(Assessment), Special Range, Panaji,
Aayakar Bhavan, Pato, Panaji Goa. ….. Respondents.

Mr. H. D. Naik, Advocates for the Petitioners.
Ms. Susan Linhares, Standing Counsel for the Respondent.

WITH
TAX APPEAL NO.21 OF 2010

Fomento Resorts and Hotels Ltd,
a Company incorporated under the
provisions of the Companies Act, 1956
and having its registered Office at
Cidade De Goa Beach Resort,
Vainguinim Beach, Goa – 403 004
through its Secretary Mr. I.B. Muchandi. .... Appellant.

Versus

The Assistant Commissioner of
Income-Tax, Central Circle, Panjim
having his address at Panjim, Goa. .... Respondent

Mr. Rafiq Dada, Senior Advocate with Mr. Nishant Thakkar, Ms. Jasmin Amalsadvala and Ms. Vinita Palyekar, Advocates for the Appellant.
Ms. Susan Linhares, Standing Counsel for the Respondent.

WITH
TAX APPEAL NO.32/2006

Fomento Resorts and Hotels Ltd,
a Company incorporated under the
provisions of the Companies Act, 1956
and having its registered Office at

Cidade De Goa Beach Resort,
Vainguinim Beach, Goa – 403 004. .... Appellant.

V/s.

1. Income Tax Appellate Tribunal,
Panaji Bench, Panaji.
(Respondent no.1 deleted from cause
title as per Order dated 13/3/2007
in MCA 29/07.

2. The Joint Commissioner of Income-Tax,
(Assessment), Special Range, Panaji,
having his address at Panaji, Goa. .... Respondents

Mr. Rafiq Dada, Senior Advocate with Mr. Nishant Thakkar, Ms. Jasmin Amalsadvala and Ms. Vinita Palyekar, Advocates for the Appellant.
Ms. Susan Linhares, Standing Counsel for the Respondent.

WITH
TAX APPEAL NO.53 OF 2007

Averina International Resorts Ltd.,
Garden View Bldg., Phase II,
Margao Goa. … Appellant

Versus

Assistant Commissioner of Income-Tax,
Circle 1, Margao - Goa. .... Respondent

Mr. Mihir Naniwadekar with Ms. Vinita Palyekar, Advocates for the Appellant.
Ms. Susan Linhares, Standing Counsel for the Respondent.

WITH
TAX APPEAL NO.54 OF 2007

Averina International Resorts Ltd.,
Garden View Bldg., Phase II,
Margao, Goa. .... Appellant.

Versus

Assistant Commissioner of Income-Tax,
Circle 1, Margao - Goa. .... Respondent

Mr. Mihir Naniwadekar with Ms. Vinita Palyekar, Advocates for the Appellant.
Ms. Susan Linhares, Standing Counsel for the Respondent.

WITH
TAX APPEAL NO.55 OF 2007

Averina International Resorts Ltd.,
Garden View Bldg., Phase II,
Margao, Goa. .... Appellant.

Versus

Assistant Commissioner of Income-Tax,
Circle 1, Margao - Goa. .... Respondent
Mr. Mihir Naniwadekar with Ms. Vinita Palyekar, Advocates for the Appellant.
Ms. Susan Linhares, Standing Counsel for the Respondent.

WITH
TAX APPEAL NO.64 OF 2007

Fomento Resorts & Hotels Ltd,

a Company incorporated under the
provisions of the Companies Act, 1956
and having its registered Office at
Cidade De Goa Beach Resort,
Vainguinim Beach, Goa – 403 004
through its Secretary Mr. I.B. Muchandi. .... Appellant.

Versus

The Assistant Commissioner of
Income-Tax, Central Circle, Panjim
having his address at Panjim, Goa. .... Respondent

Mr. Rafiq Dada, Senior Advocate with Mr. Nishant Thakkar, Ms. Jasmin Amalsadvala and Ms. Vinita Palyekar, Advocates for the Appellant.
Ms. Susan Linhares, Standing Counsel for the Respondent.

WITH
TAX APPEAL NO.69 OF 2007

Fomento Resorts & Hotels Ltd,
a Company incorporated under the
provisions of the Companies Act, 1956
and having its registered Office at
Cidade De Goa Beach Resort,
Vainguinim Beach, Goa – 403 004
through its Secretary Mr. I.B. Muchandi. .... Appellant.

Versus

The Assistant Commissioner of
Income-Tax, Central Circle, Panjim
having his address at Panjim, Goa. .... Respondent

Mr. Rafiq Dada, Senior Advocate with Mr. Nishant Thakkar, Ms. Jasmin Amalsadvala and Ms. Vinita Palyekar, Advocates for the Appellant.

Ms. Susan Linhares, Standing Counsel for the Respondent.

Coram : M.S. Sonak &
Nutan D. Sardessai, JJ.

Reserved on : 2nd August, 2019.
Pronounced on : 30th August, 2019.

JUDGMENT: (Per M.S. SONAK, J.)

Heard Mr. Rafiq Dada, learned Senior Advocate with Mr. Nishant Thakkar and Ms. Vinita Palyekar for the Appellants in Tax Appeals No.21/2009, 32/2006, 64/2007 and 69/2007.

2. Heard Mr. H.D. Naik for the Petitioners in Writ Petition No.94/2002.

3. Heard Mr. Mihir Naniwadekar with Ms. Vinita Palyekar for the Appellant in Tax Appeals No.53, 54 and 55 of 2007.

4. Heard Ms. Susan Linhares, learned Standing Counsel for the Respondents in the Appeals, as well as the Writ Petition.

5. In all these appeals and the writ petition,the common issue relates to the interpretation of the provisions in Section 3(1) of the

Expenditure Tax Act, 1987 (said Act). In Tax Appeals No.53, 54 and 55 of 2007, there is an additional issue raised in the context of the proviso to Section 4(a) of the said Act. The learned Counsel for the parties request that Tax Appeal No.32 of 2006 be treated as the lead matter in respect of the common issue and Tax Appeal No.53 of 2007, in respect of the additional issue. We do so accordingly.

6. Tax Appeal No.32/2006 came to be admitted by this Court vide order dated 21 August 2006, on the following substantial questions of law.

> *" Whether in view of the express provisions of section 3 of the Expenditure-tax Act, the Hon'ble Income-tax Appellate Tribunal ought to have held that in a case (like the Appellant) where the room charges were less than Rs.1,200/- per day per individual, no expenditure tax would be chargeable at all ? "*

7. The Judgment and Order of the Income Tax Appellate Tribunal (ITAT) dated 4.4.2006, which is subject-matter of challenge in this Appeal, relates to Assessment Years 1995-96 and 1996-97. This means that the impugned Judgment and Order dated 4.4.2006 made by the ITAT, is a common Judgment and Order in relation to the Assessment Years 1995-96 and 1996-97.

8. In so far as the Assessment Year 1995-96 is concerned, the

ITAT had, in fact, allowed the Appellant's Appeal and set aside the notice of reopening of the assessment on the ground that the Assessing Officer, despite demand, had failed to furnish reasons for reopening of the assessment. This part of the ITAT's order was questioned by the Respondent by instituting Tax Appeal No.71/2006, which came to be dismissed vide Order dated 27.11.2006. The Respondent's Special Leave Petition, against this Court's order dated 27.11.2006, also came to be dismissed on 16.7.2007. Therefore, though the challenge in this Appeal, is to the common Judgment and Order made by the ITAT on 4.4.2006, it is clarified that in this Appeal, we are only concerned with the assessment for the Assessment Year 1996-97.

9. The brief facts, in which the aforesaid substantial question of law arises for determination in this Appeal, are as follows :

(A) For the Assessment Year 1996-97, the Appellants filed return of taxable expenditure at rupees Nil.

(B) The Appellants were, however, required by the Assessing Officer to file a statement of receipts, which were chargeable to expenditure tax as per the ratio of the decision of Himachal Pradesh High Court in *Himachal Pradesh Tourism Development Corporation vs. Union of India and ors*[1] (*HPTDC*).

[1] (238 ITR 38)

(C) The Assessing Officer, after rejecting the contention of the Appellants that the Himachal Pradesh High Court's decision was inapplicable to them, by assessment order dated 27.2.2007, brought to charge taxable expenditure of ₹ 9,70,53,682/-.

(D) The Appellants, aggrieved by the assessment order dated 27.2.2001, appealed to the Commissioner of Income Tax (Appeals) at Belgaum, which appeal came to be dismissed by the CIT (Appeals) vide order dated 20.2.2002;

(E) The Appellants, thereupon appealed to the Income Tax Appellate Tribunal (ITAT) which appeal, again, came to be dismissed vide common Judgment and Order dated 4.4.2006.

(F) Hence, the present Appeal which, as indicated earlier, is restricted to the Assessment Year 1996-97.

10. Mr Dada, learned Senior Advocate for the Appellant, submits that the assessing authorities erred in placing blind reliance upon the decision of the Himachal Pradesh High Court in *HPTDC* (supra) when, in fact, the same was distinguishable on facts. He submits that in the said case, room tariff was fixed under a statute. Further, the Himachal Pradesh High Court did not have the benefit of amendment to the said Act, which came into force with effect from 1/6/2002. He submits that, based upon these two distinguishing features, the decision in *HPTDC* (supra) was not at all applicable to

the fact situation in the present matters and the assessing authorities erred in placing blind reliance upon the same.

11. Mr. Dada submits that in any case, the decision in *HPTDC* (supra) completely ignores the expression *"per individual"*, appearing in Section 3(1) of the said Act. He submits that the interpretation placed upon Section 3(1) of the said Act by the Himachal Pradesh High Court is contrary to the literal reading of the provisions and also renders the words *"per individual"*, otiose and redundant. He relies upon *Mohammad Ali Khan vs. Commissioner of Wealth Tax*[2] to submit that an interpretation, which renders the words in a statute otiose, is unacceptable. Mr. Dada submits that in the present matters, the fact that the tariff charged for rooms on *'double occupancy basis'* is not at all disputed by the Respondents. He submits that once this basic fact is not disputed, it is apparent that the tariff for an unit of residential accommodation is less than ₹ 1200 per day, per individual. He submits that the contrary interpretation adopted by the authorities is *ex facie* unlawful and ultra vires.

12. Mr. Dada submits that in such matters, the burden is always on the Revenue to demonstrate that the assessee falls within

[2] 224 ITR 672 (SC)

the strict letter of the charging provision. He submits that in the present case, from the material produced on record by the Appellant which, in fact, was not even disputed by the Respondent, it is apparent that the Appellant does not fall within the charging provisions. Yet, the assessing authorities, without discharging the burden which is otherwise cast on them, have purported to drag the Appellant into the tax net, which is, *ex facie,* impermissible. Mr. Dada relies on *Dilip Kumar Roy vs. Commissioner of Income Tax*[3] in support of the proposition that the burden is always on the Revenue to demonstrate that the Assessee indeed falls within the charging provision.

13. Mr. Dada submits that in the present case, the assessing authorities have virtually chosen to tax the Appellant by implication. He submits that in interpretation of taxing statute, strict construction is what has to be adopted. Taxing statute has to be essentially interpreted on the basis of the language used therein and not *de hors* the same. It is impermissible to add any words or to ignore any words. which appear in the statute. The assessing authorities are required to construe fiscal statutes in a fair and reasonable manner, without leaning to one side or the other or stretching the interpretation wide to cover the assessee who, otherwise, does not

[3] [94 ITR 1 (Bom)]

even fall within the ambit of the charging section. In support of these propositions, Mr. Dada relies on *Orissa State Warehousing Corporation vs. Commissioner of Income Tax*[4]; *Vikrant Tyres Ltd. vs. Income Tax Officer*[5]*; Commissioner of Wealth Tax vs. Ellis Bridge Gymkhana, etc.etc.*[6]*; Commissioner of Income Tax vs. Kasturi & Sons Ltd.*[7] and *Federation of Andhra Pradesh Chambers of Commerce & Industry & ors. etc. etc. vs. State of Andhra Pradesh & ors*[8].

14. Mr. Dada submits that the Parliament, on realisation that the expression *"per individual"* in Section 3(1) of the said Act will essentially require the room tariff to be split into two, in case of double occupancy or split into three, in case of triple occupancy has, with effect from 1.6.2002, done away with the expression *"per individual"* in Section 3(1) of the said Act. The amendment is expressly made prospective in nature. Mr. Dada submits that from this it is apparent that the law prior to 1.6.2002 very clearly requires the acceptance of interpretation now proposed by the Appellant, as opposed to the interpretation made by the Himachal Pradesh High Court in *HPTDC* (supra). Mr. Dada submits that the Himachal

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4 [237 ITR 589 (SC)]
5 [247 ITR 821 (SC)]
6 [229 ITR 1 (SC)]
7 [237 ITR 24 (SC)]
8 [247 ITR 36 (SC)]

Pradesh High Court did not have the benefit of this amendment which came into force only on 1.6.2002. He, therefore, submits that this is an additional reason why the interpretation now proposed by the Appellant, deserves acceptance over the interpretation of the Himachal Pradesh High Court in the case of *HPTDC* (supra).

15. Finally, Mr. Dada submits that even if it is assumed that prior to the amendment which came into effect from 1.6.2002, there was an ambiguity in the provisions of Section 3(1) of the said Act, then, the ambiguity is required to be resolved in favour of the Assessee and against the Revenue. Mr. Dada submits that it is settled law that in a taxing statute when two views are possible, the view which favour the assessee must be adopted in preference to the view which supports the Revenue. In respect of this proposition, Mr. Dada relies on *Commissioner of Income Tax vs. Podar Cement (P) Ltd. etc.*[9]

16. For all the aforesaid reasons, Mr. Dada submits that the substantial question of law, as framed, is required to be answered in favour of the Assesse and against the Revenue.

17. Mr. H. D. Naik, learned Counsel for the Petitioners in Writ

[9] [226 ITR 625 (SC)]

Petition No.94/2002 adopts the submissions made by Mr. Dada, learned Senior Advocate appearing for the Appellants in the aforesaid Appeals.

18. Mr. Mihir Naniwadekar, the learned Counsel for the Appellants in Tax Appeals No.53, 54 and 55 of 2007 also adopts the submissions of Mr. Dada on the common issue relating to interpretation of the provisions in Section 3(1) of the said Act.

19. Ms. Susan Linhares, learned Standing Counsel for the Respondents defends the impugned Judgments and Orders on the basis of the reasonings reflected therein. She places strong reliance upon *HPTDC* (supra) and submits that even the challenge to the said decision before the Hon'ble Supreme Court failed or, in any case, was not pursued. She submits that there is no flaw in the view taken by the Himachal Pradesh High Court and it is incorrect to allege that the High Court has failed to take note of the expression *"per individual"* as it appears in Section 3(1) of the said Act. She, therefore, submits that there was nothing wrong in the assessing authorities in placing reliance upon the case of *HPTDC* (supra). She points out with much vehemence that in fact, the Appellant had conceded the position that the issue was covered against them in view of *HPTDC* (supra). She submits that in view of such

categorical concession, which has been recorded in the impugned Judgments and Orders, it is really not open for the Appellant to urge the same contention before this Court. She submits that in such situation, the principle of estoppel clearly applies.

20. Ms. Linhares, without prejudice to the aforesaid, submits that the interpretation proposed by the Appellant is neither consistent with the literal interpretation of Section 3(1) of the said Act, nor will the same forward the objective of the said Act. She submits that the constitutional validity of the said Act has been already upheld by the Hon'ble Supreme Court in the case of *Federation of Hotel & Restaurant Association of India, etc. vs. Union of India and others*[10]. She submits that the said Act was, therefore, to be permitted to operate fully and its provision cannot be so interpreted, as to truncate its scope or ambit. She further submits that in these matters there are concurrent findings of fact that room charges for any unit of residential accommodation was in excess of ₹ 1200 per day per individual. She submits that the charging section advisably makes no reference to room charges per day or even per occupant. She submits that it is the appellants who seek to read some words in the statute, which is clearly impermissible, even according to the decision relied upon by the Appellants themselves.

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[10] 1989 3 SCC 634

21. Ms. Linhares relies on *Federation of Hotel & Restaurant* (supra); *HPTDC* (supra); *Syed Hasan Rasul Numa and ors. vs. Union of India and ors.*[11]*; The Commissioner of Income Tax, Chennai vs. M/s. Breeze Hotels Pvt. Ltd, Chennai*[12] and *Income-Tax Officer vs. Mahadeo Lal Tulsian*[13] in support of contentions.

22. For all the aforesaid reasons, Ms. Linhares submits that the substantial questions of law so framed are required to be answered against the Appellants and in favour of the Revenue, and on this basis, the present Appeals are liable to be dismissed.

23. Tax Appeal No.53 of 2007 was admitted by order dated 14.8.2007, on the following additional substantial question of law :

> *" Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in rejecting the claim for exemption under Section 4 of the Expenditure Act, 1987 ?*

24. Mr. Naniwadekar relies upon proviso to Section 4(a) of the said Act to contend that nothing in the charging section will apply in case of a hotel referred to in clause (ii) of sub-section (5) of Section

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[11] 1990 2 Scale 1007
[12] 2012 0 Supreme (Mad) 4143
[13] 1976 0 Supreme (Cal) 335

80-IA of the Income Tax Act during the period beginning on 1st day of April, 1991 and ending on 31st day of March, 2001.

25. Mr. Naniwadekar submits that in Tax Appeals No.53, 54 and 55 of 2007, the Appellant is a hotel referred to in clause (ii) of sub-Section (5) of Section 80-IA and, therefore, was exempted from the applicability of the provisions relating to payment or collection of expenditure tax under the said Act. He submits that there is no dispute that the Appellant's hotel business is located at a place which the Central Government, having regard to the need for development of infrastructure for tourism, as specified for the purposes of Section 80-IA of the Income Tax Act. He submits that the Appeals concern Assessment Years 1992-93, 1993-94 and 1994-95 and, therefore, are covered within the period prescribed in the proviso. He submits that even though the approval as contemplated by Section 80-IA5(ii) of the Income Tax Act may have been issued by the prescribed authority only on 28.7.1994, relevant to the assessment year 1995-96, that, by itself, does not mean that the Appellant's hotel was not a hotel referred to in clause (ii) of sub-Section (5) of Section 80-IA of the Income Tax Act, before the date of such approval. He submits that the approval merely recognizes and affirms the position that the Appellant's hotel was indeed a hotel referred to in clause (ii), sub-Section (5) of Section 80-IA of the Income Tax Act. He, therefore,

submits that the contrary view taken by the assessing authorities is improper and requires reversal. He submits that this is an additional ground in support of the Appellant in Tax Appeals No. 53, 54 and 55 of 2007 .

26. Ms. Linhares resists the contentions of Mr. Naniwadekar by pointing out that the Appellant who he represents had expressly conceded that its case was fully covered by the decision in *HPTDC* (supra) and further that the Appellant was not entitled to the benefit under the proviso to Section 4(a) of the said Act for any assessment year, prior to 1995-96. She submits that thereafter, rectification applications were taken out by the Appellant to contend that there was no concession. However, the rectification applications were rejected. She, therefore, submits that the Appellants in Tax Appeals No.53, 54 and 55 of 2007 may not be permitted to raise the contentions which they now seek to raise in these appeals.

27. In any case, Ms. Linhares submits that the Appellants obtained the approval, as contemplated by clause (ii), sub-Section (5) of Section 80-IA of the Income Tax Act only on 28.7.1994, relevant to the year 1995-96. Therefore, upon plain reading of the proviso, the Appellants were not entitled to the benefit of exemption prior to the Assessment Year 1995-96.

28. For the aforesaid reasons, Ms. Linhares submits that Tax Appeals No.53, 54, and 55 of 2007 are liable to be dismissed.

29. Rival contentions now fall for our determination.

30. In order to appreciate and evaluate the rival contentions, it is necessary to advert to the scheme of the said Act, in the first place.

31. The said Act was enacted to provide for levy of tax on expenditure incurred in certain hotels or restaurants and for matters connected therewith or incidental thereto. With effect from 1st October, 1991, reference to *"restaurant"* stands deleted. The challenge to the constitutional validity of the said Act, both, on the ground of legislative competence, as well as the alleged violation of Articles 14 and 19 (1)(g) of the Constitution of India was repelled by the Constitution Bench of the Hon'ble Supreme Court in the case of *Federation of Hotel & Restaurant Association of India, etc.* (supra).

32. The said Act defines the term *'assessee'* in Section 2(1) of the said Act to mean a person responsible for collecting the expenditure tax payable under the provisions of the said Act. Thus, it

is clear that the expenditure tax is imposed upon the individual who incurs expenditure in certain hotels. However, the responsibility of collection of this tax from such individual is placed upon the hotel and, therefore, the term *'assessee'* has been defined to mean a person responsible for collection of expenditure tax payable under the provisions of the said Act. Section 2(6) defines *"hotel"*, to include a building or part of a building where residential accommodation is, by way of business, provided for a monetary consideration.

33. Section 2(8) of the said Act defines expression *'person responsible for collecting'* to mean a person who is required to collect tax under the said Act or is required to pay any other sum of money under the said Act, and includes every person in respect of whom any proceedings under the said Act have been taken, and every person who is deemed to be an assessee-in-default under any provision of the said Act.

34. Section 2(10), defines the expression *'room charges',* to mean the charges for an unit of residential accommodation in a hotel and includes the charges for (a) furniture, air-conditioner, refrigerator, radio, music, telephone, television; and (b) such other services as are normally included by a hotel in room rent and it does not include charges for food, drinks, and any services other than

those referred to in sub-clauses (a) and (b). Expression *'chargeable expenditure'* is defined to mean the expenditure referred to in Section 5 of the said Act.

35. Section 3 of the said Act is most important provision, in so far as the issues raised in the present Appeal are concerned and the same reads thus :

> *"3. Application of the Act.*
>
> *This Act shall apply in relation to any chargeable expenditure-- (1) incurred in a hotel wherein the room charges for any unit of residential accommodation at the time of incurring of such expenditure are [one thousand two hundred rupees] or more per day per individual and where,--*
>
> *(a) a composite charge is payable in respect of such unit and food, the room charges included therein shall be determined in the prescribed manner;*
>
> *(b) (i) a composite charge is payable in respect of such unit, food, drinks and other services, or any of them, and the case is not covered by the provisions of sub-clause (a), or*
>
> *(ii) it appears to the Assessing Officer that the charges for such unit, food, drinks or other services are so arranged that the room charges are understated and the other charges are overstated,*
>
> *the Assessing Officer shall, for the purposes of this clause determine the room charges on such reasonable basis as he may deem fit; and*

(2) incurred in a restaurant [before the 1st day of June, 1992."

36. Section 4 of the said Act, is the charging section and provides that subject to the provisions of the said Act, there shall be charged on and from the commencement of the said Act, a tax at the rate of 10 per cent of the chargeable expenditure incurred in a hotel referred to in clause (1) of section 3. Proviso to this Section provides that nothing in this clause shall apply in the case of a hotel referred to in clause (ii) of sub-section (5) of section 80-IA of the Income-tax Act during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 2001.

37. Section 5 provides for the meaning of the expression *'chargeable expenditure'* for the purposes of the said Act. This section, amongst other matters, provides that the chargeable expenditure in relation to a hotel referred to in clause (1) of Section 3, means any expenditure incurred in, or payments made to, the hotel in connection with the provision of any accommodation, residential or otherwise; or food or drink by the hotel, whether at the hotel or outside, or by any other person at the hotel; or any accommodation in such hotel on hire or lease; or any other services at the hotel, either by the hotel or by any other person, by way of beauty parlour, health club, swimming pool or other services.

However, there are some exceptions made as regards the expenditure incurred in foreign exchange, with which we are not concerned.

38. Sections 6 and 24 of the said Act envisages and provides for authorities to administer the said Act and enforcement of machinery of the said Act for the purposes of implementation of the provisions of the said Act.

39. Section 7 provides deals with collection and recovery of tax. This section, *inter alia*, provides that where any chargeable expenditure is incurred in a restaurant referred to in clause (1) of section 3 of the said Act, if the expenditure relates to the services specified in sub-clauses (a) to (d) of clause (1) of Section 5 provided by the hotel, the person who carries on the business of such hotel, the expenditure so collected shall be at the rate specified in clause 4(a) of the said Act.

40. Section 7(3) of the said Act provides that the tax so collected by the person who carries on the business of the hotel, during any calendar month in accordance with the provisions of sub-section (1) or sub-section (2) shall be paid to the credit of the Central Government by 10th of the month immediately following the said calendar month.

41. Section 7(4) of the said Act provides that any person responsible for collecting the tax, who fails to collect the tax in accordance with the provisions of sub-section (1) or sub-section (2) shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3) of the said Act.

42. Section 8 provides for a person responsible for collecting tax to furnish prescribed return. Section 9 provides for assessment. Section 10 makes a provision for best judgment assessment. Section 11 makes a provision for chargeable expenditure escaping assessment. Section 12 makes provision for rectification of mistakes. Section 13 provides for time limit for completion of assessment and reassessment. Section 14 relates to interest on delayed payment of expenditure tax. Sections 15 to 19 relate to penalties. Section 20 relates to notice of demand. Section 21 relates to revision of orders by the Commissioner. Section 22 relates to appeals to the Commissioner (Appeals). Section 23 provides for appeals to Appellate Tribunal. Section 24 provides for application of provisions of Income-tax Act to the said Act. Section 25 deals with willful attempt to evade tax, etc. Section 26 deals with failure to furnish prescribed returns. Section 27 deals with false statement in verification, etc. Section 28 deals with abetment of false return, etc.

Section 29 provides that certain offences to be non-cognizable. Section 30 provides for institution of proceedings and composition of offences. Section 31 confers power upon the Board to make rules and Section 32 confers power upon the Central Government to remove the difficulties.

43. Thus, the scheme of the Act is that the expenditure tax, is a tax payable by an individual in relation to any chargeable expenditure incurred by such an individual in a hotel wherein the room charges for any unit of residential accommodation at the time of incurring of such expenditure are ₹1200 or more, per day, per individual. The charge of such expenditure tax shall be at the rate of 10 % of the chargeable expenditure in a hotel referred to in Section 3(1) of the said Act. Though, the expenditure tax is a tax on an individual incurring chargeable expenditure as aforesaid, such tax has to be collected by the hotel or the person carrying on the business of the hotel, where such expenditure relates to the services specified in clauses (a) to (d) of sub-Section (1) of Section 5 of the said Act. If such hotel or the person carrying on business of the hotel, fails to collect and credit the tax, then notwithstanding such failure, it is the hotel or the person carrying on business of the hotel who shall be liable to pay the tax to the credit of the Central Government.

44. From the scheme, it is absolutely clear that the

expenditure tax is basically a tax on the individual who incurs chargeable expenditure in a hotel specified in Section 3(1) of the said Act. This is not the tax on the hotel itself, or on the person carrying on business of the hotel. Such hotel or the person carrying on business of the hotel is only made responsible for collection of the tax and crediting of the same to the Central Government. Only in case of failure on the part of the hotel, or the person carrying on business of the hotel to collect and credit such expenditure tax from the individual incurring chargeable expenditure at the hotel, does the hotel or the person carrying on business of the hotel, become liable to pay such tax to the Central Government. Therefore, the basic premise necessary to be noted is that the expenditure tax is a tax on the individual incurring chargeable expenditure and not upon the hotel or the person carrying on the business of the hotel where such individual incurs the chargeable expenditure.

45. Now, none of these Appeals have been instituted by an individual primarily responsible for payment of expenditure tax. These Appeals have been instituted by the hotels or the persons carrying on business of the hotel, because they were responsible for collection of such expenditure tax from the individuals, and having failed to do so, were held liable to pay such tax to the credit of the Central Government.

46. The Appellants, i.e. the hotels or the persons carrying on the business of hotels, contend that the said Act does not apply to them because the room charges for any unit of residential accommodation at their hotels are fixed on *'double occupancy basis'.* Therefore, though room charges *per se* may appear to exceed ₹ 1200 per day, having due regard to the expression *'per individual'* appearing in Section 3(1) of the said Act, such room charges are required to be *'divided into two'*. Upon such division, they contend that the room charges do not exceed ₹ 1200 and, therefore, the said Act does not apply to them. The Appellants contend that any other interpretation will render the expression *'per individual'* appearing in Section 3(1) of the said Act, redundant or otiose. They contend that since this is impermissible, the interpretation proposed by them, deserves acceptance.

47. The aforesaid contention on behalf of the Appellants will have to be examined by keeping in mind the basic premise that the expenditure tax, is a tax on an individual who incurs chargeable expenditure in a specified hotel. This is not a tax on the hotel itself or on the person carrying on carrying on the business of the hotel. So construed, it is clear that Section 3(1) of the said Act is, not strictly speaking the charging section. In fact, in case of *Federation of Hotel & Restaurant Association of India, etc.* (supra), the Hon'be

Supreme Court has referred to Section 4 of the said Act, as the charging section.

48. The scheme of the said Act is also very clear in the sense that the incidence of tax is on the persons who incur the chargeable expenditure in the class of hotel to which the act applies. The hotels or the persons who carry on business of the hotel, are only charged with the responsibility of collection of this expenditure tax. It is only in case of failure to collect, that the hotel or the person carrying on business of the hotel, are made liable to pay such tax to the credit of the Central Government. Therefore, the contentions raised by the Appellants will have to be evaluated by keeping in mind this basic scheme and this basic postulates in relation to the said Act.

49. The analysis of Section 3(1) of the said Act indicates that this provision relates to the applicability of the said Act. In its opening portion, this section states that it shall apply *'in relation to any chargeable expenditure'.* This means that Section 3(1), at least in its opening part, does not make reference to the application of the said Act to any hotel as such, but rather it refers to application in relation to *'any chargeable expenditure'*. This is in consonance with the basic scheme of the said Act that the expenditure tax is not a tax on any hotel or on any person carrying on business of the hotel, but rather the expenditure tax is a tax on chargeable expenditure incurred

by an individual at the hotel specified in Section 3(1) of the said Act.

50. Further, Section 3(1) of the said Act proceeds to state that the said Act shall apply in relation to any chargeable expenditure incurred in a hotel wherein the *'room charges'* for *'any unit of residential accommodation'* at the time of incurring of such expenditure are ₹ 1200 or more *'per day' 'per individual'.* Rest of the section deals with determination of room charges where composite charges are payable in respect of such unit meaning unit of residential accommodation and food. With this later part of the section we are presently not concerned in these Appeals.

51. Now, it is correctly the case of the Appellants that each of the expressions, which will include the above referred italicized expressions in Section 3(1) of the said Act have to be given some meaning and cannot be ignored while considering the scope and import of the section. Even the Respondents do not and perhaps cannot dispute this proposition.

52. The expression "room charges" in Section 3(1) of the said Act poses no difficulty in interpreting, because such expression is defined in Section 2(1) of the said Act. Significantly, this definition refers to charges for *'a unit of residential accommodation in a hotel'* and then proceeds to state that it includes the charges for furniture,

air-conditioner, refrigerator, radio, music, telephone, television and such other services as are normally included by a hotel in room rent., but does not include charges for food, drinks and any services other than those referred to in sub-clauses (a) and (b).

53. At least, from the clear and exhaustive definition of the expression *'room charges'* in Section 2(10) of the said Act, there is no scope to introduce concepts like *'double occupancy'* or *'triple occupancy'* or *'quad occupancy'*. The statutory definition, upon plain and literal interpretation, does not refer to these concepts and even the legislative intent does not suggest any such construction. Emphasis in the statutory definition, which is quite exhaustive, is on '*a unit of residential accommodation'*. There is no reference to determination of *'room charges'*, *'per bed'* or *'per occupant'* or some such factors in support of the concept of dividing the room charges on occupancy basis. Besides, reference to charges for *'furniture'* in the statutory definition itself would obviously include the charges towards beds, dressing tables, wardrobe, etc., though such charges almost never or rarely are separately charged. The legislative intent was to define this expression quite exhaustively, so that its width and the scope is not unduly restricted by attempting to split such charges for accommodation *per se* and charges for furniture, air-conditioner, refrigerator, etc. At least the statutory definition of the expression

'room charges' in Section 2(10) of the said Act does not, in our opinion, support the concept of splitting of the room charges on the basis of occupancy position, as is contended by the Appellants.

54. The expression *'any unit of residential accommodation in a hotel'* is not statutorily defined in the said Act, or for that matter, in the Income Tax Act. Therefore, we will have to assign to this expression its natural meaning, keeping in mind the context and perspective of the said Act. So construed, the expression means a room in a hotel for residential accommodation. This expression will have to be read and construed along with the definition of the expression 'room charges' in Section 2(10) of the said Act. From such conjoint reading, it is quite clear that the expression *'any unit of residential accommodation'* refers to the hotel room, along with all its furnishings, as indicated in substantial details in Section 2(10) of the said Act. Again, this expression, *per se* does not support the construction that *'a unit'* must be determined on the basis of *'beds'* or *'occupancy'*. In fact, any such construction might amount to stretching the expression beyond its natural meaning or even beyond setting in which it is placed.

55. The expression *'per day'* in Section 3(1) of the said Act poses no difficulty and in fact, none was raised by the learned Counsel for either parties. The expression is quite clear and self

evident and needs no further analysis.

56. The crucial expression for the purposes of the present Appeals is the expression *'per individual'*. This expression is not statutorily defined in the said Act. There is no doubt that this expression will not only have to be assigned some meaning, but further this expression is also required to be taken into account for the purposes of interpreting Section 3(1) of the said Act. This is in consonance with the law laid down by the Hon'ble Supreme Court in *Mohammad Ali Khan* (supra) that it is not open to a Court to ignore the expression in a statute or to interpret a statute in a manner which renders the words in a statute redundant or otiose. To the same effect are the rulings in *Orissa State Warehousing Corporation* (supra), *Vikrant Tyres Ltd.* (supra) *Ellis Bridge Gymkhana, etc.etc.* (supra)*;* and *Federation of Andhra Pradesh Chambers of Commerce & Industry & ors. etc. etc.* (supra).

57. According to us, Section 3(1) of the said Act will have to be interpreted, having regard to the provisions therein, in their entirety and not merely by focusing upon the various expressions used therein disjunctively. Further, for interpreting the provision in its entirety, interpretation which harmonizes all such expressions, will have to be preferred over the interpretation which ignores or leaves out any expressions found in the statute. Further, an attempt

will have to be to harmonize the provision in Section 3(1) of the said Act with other provisions in the said Act as well as the basic scheme of the said Act. In doing so, due regard will have to be had to the principles of interpretation of statutes, including, in particular, the principles relating to interpretation of taxing statutes.

58. As held in various decisions, referred to by Mr. Dada, the first principle in such matters is that the words of a statute are to be understood in their natural, ordinary or popular sense and the phrases and sentences are to be construed according to their general meaning, unless that leads to some some ambiguity or unless there is something in the context or objects of the statute to suggest contrary. Secondly, in taxing statutes, regard must be had to the strict letter of the law and if Revenue satisfies the Court that the case falls strictly in the provisions of law, the subject can be taxed. Further, as held in *Dilip Kumar Roy* (supra), the burden is always upon the Revenue to show that the Assessee comes with the charging provision. Thirdly, a fiscal statute will have to be interpreted only on the basis of the language therein and not *de hors* the same. No words can be added or ignored, only the language used in a statute is to be considered for ascertaining the proper meaning and intent of the legislation. This means that the intention of the legislation must be gathered from the language used in the statute. Fourth principle is

that the Courts, whilst construing taxing statute, have to give a fair and reasonable construction to the language of the statute, without leaning to one side or the other, meaning thereby that no tax or levy can be imposed on the subject when the words of the statue show the clear intention. This means that the so called equitable construction of words of the statute is not permissible. This is also expressed in the principle that before taxing any person, the Revenue must show that such person falls within the ambit of the charging section by clear words used in the section. No person can be taxed only by implication. A charging section has to be strictly construed and if a person is not brought with the ambit of a charging section by clear words, he cannot be taxed at all. Finally, the fifth principle, relevant for our purposes is that even when two views are possible in a taxing statute, the view which favours the assessee must be adopted, as held in *Podar Cement (P) Ltd. etc.* (supra). Therefore, the provision in Section 3(1) of the said Act will have to be interpreted in the light of these principles of statutory interpretations of taxing statute.

59. On a plain reading of the provisions in Section 3(1) of the said Act, we are unable to accept the interpretation proposed by the Appellants on the basis of occupancy position in units of residential accommodation at their hotel. The expression *'per individual'* appearing in Section 3(1) of the said Act will have to be

construed in a reasonable manner, having regard to the scheme of the said Act. As noted earlier, the expenditure tax is basically a tax on the individual who incurs chargeable expenditure at the specified hotel. The expenditure tax is not a tax on the hotel itself or on the person carrying on the business of the hotel. Once this basic scheme is understood and accepted, it is apparent that the expression *'per individual'* refers to an individual incurring chargeable expenditure and consequently, primarily liable for payment of expenditure tax. The expression *'per individual'* does not refer to the individual, actually occupying the unit of residential accommodation in the hotel. There is nothing in this expression which would permit the import of concepts of double or triple or quad occupancy for purposes of determining the room charges in respect of any unit of residential accommodation in the hotel. Neither the literal interpretation of the expression, nor by reference to legislative intent can such concepts be imported in Section 3(1) of the said Act, or to construe the determination of *'room charges'* under Section 2(10) of the said Act.

60. As noted earlier, the provisions in Section 3(1) of the said Act or for that matter, other provisions in the said Act, make no reference whatsoever to the aspects like *'occupancy', 'number of beds', 'room charges per bed'* or *'room charges per occupant'.*

Therefore, the interpretation proposed by the Appellants would amount to reading the words in Section 3(1) of the said Act or for that matter, in the said Act itself, which is impermissible. In any case, such an interpretation would amount to introducing the concepts in the said Act which find no place either in the express words of the statute, or even by reference to the legislative intent. This means that neither the principle of literal interpretation, nor the principle purposive interpretation, supports the construction proposed. Rather, the interpretation adopted by the Revenue is quite consistent with the text of the statute and co-incidentally furthers the legislative intent of the said Act. Therefore, such interpretation deserves acceptance over the interpretation proposed by the Appellants.

61. Section 3(1) of the said Act merely provides that the said Act shall apply *"in relation to any chargeable expenditure incurred"*. Section 3(1) does not say that it will apply to any hotel as such. Section then proceeds to specify the kind of the hotels in which an individual will have to incur the chargeable expenditure, in order that the said Act applies in relation to such chargeable expenditure. Section 3(1) then provides that such chargeable expenditure must be incurred by an individual in a hotel wherein the room charges for any unit of residential accommodation, at the time of incurring such

expenditure, are more than ₹ 1200 per day. Reading of Section 3(1), in this manner, neither ignores the expression *"per individual"* appearing in Section 3(1), nor does it downplay the expression *"the room charges for any unit of residential accommodation"* as it appears in the very same section. In fact, such reading of the two expressions, harmonises the two expressions and, does not render either of the expressions otiose or redundant. Such reading would, therefore, be in consonance with the law laid down by the Hon'ble Supreme Court in several decisions relied upon by Mr. Dada himself in these Appeals.

62. If the interpretation suggested by the Appellants is to be accepted, then, the entire emphasis will be on the expression *"per individual"* without regard or at least sufficient regard to the equally important expression *"the room charges for any unit of residential accommodation"* appearing in Section 3(1) of the said Act. This is impermissible and, therefore, effort must be to harmonize the two expressions. If the interpretation adopted by the Revenue is accepted, then, both these important expressions will be harmonized and together the interpretation will be in consonance with the legislative scheme.

63. The interpretation proposed by the Appellants would amount to reading the words into the provisions or at least introducing concepts in the provisions, based upon the determination

of room tariff, not on the basis of *"any unit of residential accommodation",* but on the basis of *"double occupancy"*, *"triple occupancy"* etc. when neither letter nor the intent supports any such construction. The literal interpretation, in the present case, does not support the interpretation proposed by the Appellants. Incidentally, the interpretation proposed by the Revenue is not only consistent with the literal interpretation, but also furthers the intent and, therefore, the same deserves preference.

64. The definition of the expression 'room charges' in Section 2(10) of the said Act, as noted earlier, also does not admit of any concept of determination of room charges on the basis of double, triple or quad occupancy. Rather, the emphasis in the statutory definition is on the unit of residential accommodation. Since this is a taxing statute, neither the Revenue, nor the Assessee can propose any construction based only on the legislative intent. In fact, it is the case of the Appellants themselves that there can be no question of reference to *'intent'* and if the subject subject falls within the clear words of the statute, then, the subject becomes liable to pay tax, irrespective of any hardships that may be involved in the process. Even otherwise, there is nothing in the said Act or in the scheme of the said Act to suggest that the legislative intent supports the construction proposed by the Appellants.

65. For instance, the Appellants say that in respect of unit of residential accommodation where the room charges are fixed on *"double occupancy basis"*, the expression *"per individual"* must necessary imply that such room charges be split or divided by two. The same logic is sought to be extended to cases where the room charges are fixed on *"triple occupancy basis"* or *"quadruplicate occupancy basis"* where it is suggested that the room charges must be so split or so divided by a number of beds or a number of occupants. The said Act refers to room charges for an unit of residential accommodation in terms of the definition in Section 2(10) of the said Act. There is no further distinction made in the said Act on the basis of double occupancy or triple occupancy or quad occupancy when it comes to determination of room charges. Such distinction is some unilateral act by the hotel concerned and the same cannot govern the statutory construction, particularly when the provisions of a statute are quite clear.

66. It is not even the case of the Appellants that where the room charges are determined on double occupancy basis and room is occupied by only a '*single occupant*' the charges are split or divided into two and such occupant is made to pay such split or divided charges. It is also not the case of the Appellants that where two

occupants occupy a room on double occupancy basis, invariably the the expenditure is separately or independently incurred by the two occupants towards room charges, by splitting the same or dividing the same into two. All that the Appellants contend is that they have fixed the room charges on *"double occupancy basis"* and, therefore, the room charges are required to be split or divided by two since the fraction does not exceed ₹1200, the said Act is inapplicable. Such contention, according to us, does not deserve acceptance.

67. Though it is true that the burden of establishing that the Assessee indeed falls within the tax net or the charging provision of the taxing statute, is always on the Revenue, in the present case, it cannot be said that the Revenue has failed to discharge this burden. From a plain reading of the provisions of Section 3(1), as also Section 4 of the said Act, it is clear that the Appellants are included in the tax net, having failed to collect the expenditure tax from the individuals, liable to pay expenditure tax in the first instance. It is the Appellants, who by contending that their room charges were fixed on double occupancy basis, seek to exempt themselves from the applicability of the provisions of the said Act. In these circumstances, it was for the Appellants to have placed all relevant material before the assessing authorities to make good their case for exemption. Merely stating that the room charges were fixed on double occupancy

basis, was certainly not sufficient to exempt the Appellants from the applicability of the said Act. In fact, a plain reading of the provisions of the said Act makes it clear that the said Act was indeed applicable to the Appellants, since the room charges per residential unit were in excess of ₹ 1200 per day.

68. The Appellants submit that the Revenue has no where disputed that the room charges were fixed by them on *"double occupancy basis"*. This may or may not be so. However, even assuming that this was so, admittedly, it was not even the case of the Appellants that more than one individuals incur the chargeable expenditure in the hotel wherein the room charges or for any unit of residential accommodation, exceed ₹ 1200 per day. It was not even the case of the Appellants that the individual invariably or in particular cases split up the chargeable expenditure or incur the chargeable expenditure independent of one another when room charges are fixed on "*double occupancy basis" or "triple occupancy basis".*

69. Based upon some artificial ambiguity, when, in fact there exists none, the assessee cannot claim benefit of the principle that such ambiguities in a fiscal statue deserve to be resolved in favour of the assessee. The principle that the ambiguities in a fiscal statute have to be resolved in favour of the assessee, applies in case of

genuine ambiguities and not to ambiguities created by overemphasizing upon one of the expressions in a statute and ignoring or downplaying the other expression in the same statute. Therefore, the principles in the case of *Podar Cement (P) Ltd. etc.* (supra) will clearly not apply to the present appeals.

70. In *HPTDC* (supra), the Himachal Pradesh High Cour4t rejected the connection now being raised by the Appellants, by observing thus :

> ***"15.*** *The plea on behalf of the petitioner-corporation as to the mode and manner of computing the room charges for any unit of residential accommodation at the time of incurring of such expenditure, viz., four hundred or one thousand two hundred rupees or more per day per individual, may be taken up for consideration first. The stand taken by learned counsel for the petitioner-corporation is that even in a case when the charges for any unit of residential accommodation is four hundred or one thousand two hundred rupees or above, as the case may be, as per the approved tariff, depending upon the number of persons who occupied and who were charged at a given time or the number of beds permitted to be used, the tariff rates have to be further divided per day per head and only when the same is found to satisfy the minimum bench mark rate stipulated in section 3(1), the hotel concerned should be considered to answer the description for application of the Act. We are unable to appreciate and*

accept such a stand. Annexure P-1, which is said to be the rate list approved by the Commissioner of Tourism in respect of the various groups of hotels of the petitioner-corporation under the provisions of the Himachal Pradesh Registration of Hotels and Travel Agents Act, 1969, and the rules made thereunder, indicate that the unit is identified with a room and the rate fixed is with reference to the room as a unit, be it single bed, double bedor triple bed, except in cases of dormitories. Consequently, even if a single person occupies any one of such rooms treated as one unit with more than one bed, except in case of dormitories, having regard to the normal and accepted method of charging of such dormitories or rooms in any hotel—it should be taken as a whole and there is no justification to divide the charges or tariff further with the number of beds to find out or decide about the applicability or otherwise of the Act, as envisaged under section 3(1) of the Act. This is obvious, also for the reason that no two strangers, except in case of dormitories, will or be allowed to share a room and, therefore, the expenditure incurred for room charges from the main or one person who hires the room cannot further be allowed to be divided by the number of persons who really occupied, as claimed for the petitioners in adjudging the applicability of the Act."

71. The basis for attempting to distinguish the Judgment in *HPTDC* (supra) does not appeal to us. In paragraph 15 of the said Judgment, there is reference to the rate list approved by the

Commissioner of Tourism in respect of the various groups of hotels of the petitioner-corporation under the provisions of the Himachal Pradesh Registration of Hotels and Travel Agents Act, 1969, and the rules made thereunder. Such approval by the Commissioner of Tourism in respect of a Government Corporation, according to us, makes no difference to the principle involved. The instance referred to in the said Judgment or the observations that no two strangers except in case of dormitories, will be allowed to share a room, has to be understood in the context or in the proper perspective. As noted earlier, the expenditure tax is a tax on the expenditure incurred by an individual. It is not even the case of the present Appellants that in case of a room whose tariff is fixed on double occupancy basis, the two occupants incur expenditure separately or individually. Ultimately, from the material placed on record, it is apparent that it is only a single individual who is incurring the expenditure, *inter alia,* in respect the room charges, even where the room charges are determined on *'double occupancy basis'.* Admittedly, the decision in *HPTDC* (supra), was not interfered with by the Hon'ble Supreme Court, though there is some doubt as to whether such non-interference was because the appeal against the same was withdrawn or the appeal against the same was disposed of, taking into consideration the tax effect. It is pertinent to note that the hearing in these Appeals was adjourned on several occasions, on behalf of the

Appellants by stating that the hearing of these Appeals must wait the outcome of the decision of the Hon'ble Supreme Court in the appeal against the *HPTDC* (supra) decision.

72. The circumstance that the Expenditure Tax Act came to be amended with effect from 1.6.2002, also does not lead to the inference that the law prior to the amendment entitled the hotel or the person carrying on business of the hotel to divide the room charges as defined under Section 2(10) of the said Act by number of beds in such room or number of occupants in such room. As noted earlier, the plain reading of the provisions of Section 3(1) of the said Act prior to its amendment, does not support any such construction. There is no presumption that the legislature, in every case, amends the law, only because there was some ambiguity in the existing law. The legislature may amend the law for variety of reasons. One of the reasons for amending the law may, as well be to set at rest, some contentions, which, though not tenable, are repeatedly raised to avoid payment of tax. In any case, the assessing authorities had to interpret the provisions as they stood on the date when the assessment was made. This is what the assessing authorities have precisely done in these matters. The Appellants had, in fact, conceded before the ITAT that the issue was concluded against them in terms of the decision of the Himachal Pradesh High Court

in *HPTDC* (supra). The only contention which was raised, was that the decision in *HPTDC* (supra) was not delivered by the jurisdictional High Court. In absence of any contrary decision, there was nothing illegal in the assessing authorities relying upon the decision in *HPTDC* (supra).

73. Writ Petition No.94/2002, as filed, raises the very same issue, as is raised in the Appeals. In fact, Mr. H.D. Naik, learned Counsel for the Petitioners merely adopted the submissions made by Mr. Dada support of the Appellants.

74. For all the aforesaid reasons, the substantial question of law relating to the interpretation of the provision in Section 3(1) of the said Act is required to be answered against the Appellants and in favour of the Revenue.

75. In so far as Tax Appeals No.53, 54 and 55 of 2007 are concerned, we note that the Appellants had virtually conceded before the ITAT that the benefit under the proviso to Section 4(a) of the said Act would be inapplicable to the Appellants for any assessment years, prior to 1995-96, because the approval of the Director General, (Exemption) was obtained only on 28/7/1994, relevant to the Assessment Year 1995-96. Even the application for rectification contending that no such concession was ever made, was rejected by

the ITAT. However, we do not propose to non-suit the Appellants on this basis, accepting the contentions of Mr. Naniwadekar that the orders made on the rectification application had made it clear that the concession will not preclude the Appellants from raising further challenges and that there can be no estoppel against the law.

76. The proviso to Section 4(a) of the said Act makes very specific mention to a hotel referred to in clause (ii) of sub-section (5) of section 80-IA of the Income-tax Act. There is no reference to clause (iii) of sub-section (4) of section 80-IA of the Income-tax Act. Admittedly, approval in terms of clause (ii) of sub-section (5) of section 80-IA of the Income-tax Act was obtained only on 28.7.1994 relevant to the Assessment Year 1995-96. Thus, upon plain reading of the proviso to Section 4(a), no exemption can be extended to the Appellants for any assessment year prior to 1995-96. To accept the Mr. Naniwadekar's contention and to grant exemption to the Appellants, would mean reading of some provision in the proviso to Section 4(a) of the said Act, which provision, admittedly, finds no place in the text of the proviso to Section 4(a) of the said Act.

77. In fact, Mr. Naniwadekar, without saying as much, proposes that the expression *"clause (ii) of sub-section (5) of section 80-IA"* be substituted with the expression *"clause (iii) of sub-section (4) of section 80-IA".* The exemption is, thus, sought to be claimed

on the basis of some sort of implication. This, according to us, is impermissible. No such violence can be done to the statutory text and that too in determining whether the Assessee falls within the exemption clause. On a plain reading of the provisions in the proviso to Section 4(a) i.e. on interpretation of the provision on its own merits, we are satisfied that the Appellant has made out no case for the extension of exemption for any assessment year, prior to 1995-96.

78. Accordingly, we see no error in the view taken by the ITAT and the additional substantial question of law, framed in these appeals, is also required to be answered against the Appellant and in favour of the Revenue.

79. For all the aforesaid reasons, all these Tax Appeals fail and are, hereby dismissed.

80. Writ Petition No.94/2002 also fails and is, hereby, dismissed.

81. In the facts and circumstances of the present case, there shall be no order as to costs.

Nutan D. Sardessai, J. ***M.S. Sonak, J.***

82. At the stage of pronouncement of this judgment, Ms. Vinita Palyekar applied for continuation of interim relief for a period of eight weeks and we also granted such continuation on the basis that the interim relief was already in operation.

83. Ms. V. Palyekar, however, now mentions the matter at 1.25 p.m. to point out that there was no interim relief, in operation, in any of the appeals. Accordingly, there is no question of grant of any interim relief in the appeals.

Nutan D. Sardessai, J. ***M.S. Sonak, J.***