IN THE HIGH COURT OF DELHI AT NEW DELHI

32.

ITA 794/2007

Judgment reserved on : 3rd

December, 2007

10.12.2007

Date of decision : 10th December, 2007

COMMISSIONER OF INCOME TAX ..... Appellant

Through Ms. Prem Lata Bansal, Advocate.

versus

ASIAN HOTELS LIMITED .....

Respondent

Through Mr. M.P. Rastogi and Mr. K.N.Ahuja, Advocates.

AND

33. ITA 998/2007

COMMISSIONER OF INCOME TAX ..... Appellant

Through Ms. Prem Lata Bansal, Advocate.

versus

ASIAN HOTELS LIMITED ..... Respondent

Through Mr. M.P. Rastogi and Mr. K.N.Ahuja, Advocates.

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed

to see the order

Yes

2. To be referred to the reporter or not

Yes

3. Whether the order should be reported in the Digest

Yes

DR. S. MURALIDHAR, J.

1. ITA No. 794 of 2007 is an appeal by the Revenue against the judgment dated

30th November, 2006 passed by the Income Tax Appellate Tribunal (Tribunal)

Delhi Bench G , New Delhi in ITA No. 1266(Del.)/2004 for the Assessment Year

2000-01. ITA No. 998 of 2007 is an appeal by the Revenue against the order

dated 9th February, 2001 passed by the Tribunal in ITA No. 430(Del.)/1998 for

the Assessment Year 1995-96. Since both the appeals raise an identical

question, they are being disposed of by this common judgment.

2. The question sought to be urged by the Revenue in both appeals is as

follows:

Whether the Tribunal was justified in law in holding that the notional interest

on refundable interest free deposit received by the Assessee in respect of a

shop let out on rent was neither taxable as business profit under Section 28(iv)

of the Income Tax Act, 1961 (Act) nor income from house property under Section

23(1)(a) of the Act

3. The Assessee had received interest free deposit in respect of shops given on rent. Relying on the earlier assessment for the Assessment Year 1993-94, the Assessing Officer (AO) added to the Assessee s income notional interest on the interest free deposit at the rate of 18% simple interest per annum on the ground that by accepting the interest free deposit, a benefit had accrued to the Assessee which was chargeable to tax under Section 28(iv) of the Act. The notional interest added by the AO to the Assessee s income for the Assessment Year 1995-96 was Rs.34,48,800/- and for the Assessment Year 2000-01, Rs.35,18,370.

4. For the Assessment Year 2000-01, the Commissioner of Income Tax (Appeals) [CIT(A)] reversed the order of the AO and held that since the interest free deposit would automatically result in an increase in the profits, any further addition of the notional income on such deposits was imaginary and unrealistic. The addition was, therefore deleted. Dismissing the further appeal by the

Revenue, the Tribunal relied on its earlier decision in Bharat Hotels Limited

53 ITR 450 as well as the decision of this Court in Ravinder Singh v.

Commissioner of Income Tax (1994) 205 ITR 353 and upheld the order of the

CIT(A).

5. As regards the Assessment Year 1995-96, the CIT(A) concurred with the AO

but the Tribunal allowed the Assessee s appeal and reversed the decision of the

CIT(A) relying upon its order in the case of the Assessee itself for the

Assessment Year 2000-01.

6. Mrs. Prem Lata Bansal, learned Senior Standing counsel for the Revenue

refers to the relevant statutory provisions and submits that it is inconceivable

that the Assessee received the interest free deposit in respect of the premises

let out on rent without any benefit accruing to it. The value of such benefit

had been reasonably determined by the AO and, therefore, the subsequent order of

the reversal of the Tribunal was incorrect in law. According to her the

decision of the Tribunal in Bharat Hotel Limited was distinguishable on facts and the question that arose there does not arise for determination in the present cases.

7. Ms. Bansal is right in her last submission. We may notice that the appeal filed by the Revenue in respect of Bharat Hotels Limited (ITA No. 4969 of 2000) was admitted by this Court on 27th November, 2000 on certain questions which do not include the specific question that arises in the present appeals. However, for the reasons explained hereafter, we are unable to be persuaded to hold that the Tribunal erred in the view it took in the impugned orders.

8. Sections 23(1)(a) and 28(iv) of the Act read as under:

Annual value how determined

(1) For the purposes of section 22, the annual value of any property shall be deemed to be-

(a) the sum for which the property might reasonably be expected to let from year to year; or

(b) where the property or any part of the property is let and the actual rent

received or receivable by the owner in respect thereof is in excess of the sum

referred to in clause (a), the amount so received or receivable; or

(c) where the property or any part of the property is let and was vacant during the whole or any part of

the previous year and owing to such vacancy the actual rent received or receivable by the owner in

respect thereof is less than the sum referred to in cl. (a), the amount so received or receivable.

Provided that the taxes levied by any local authority in respect of the property shall be deducted

(irrespective of the previous year in which the liability to pay such taxes was incurred by the owner

according to the method of accounting regularly employed by him) in determining the annual value of

the property of that previous year in which such taxes are actually paid by him.

Explanation. —For the purposes of cl. (b) or cl. (c) of this sub-section, the amount of actual rent

received or receivable by the owner shall not include, subject to such rules as may be made in this

behalf, the amount of rent which the owner cannot realise."

"Sec. 28 — Profits and gains of business or profession. The following income shall be chargeable to

income-tax under the head "Profits and gains of business or profession"—

(i) to (iii) xxxxxx

(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business

or the exercise of a profession;"

A plain reading of the provisions indicates that the question of any notional interest on an interest free

deposit being added to the income of an assessee on the basis that it may have been earned by the

assessee if placed as a fixed deposit, does not arise. Sec. 28(iv) is concerned with business income and

is distinct and different from income from house property. It talks of the value of any benefit on

perquisite, "whether convertible into money or not" arising from "the business or the exercise of a

profession." It has been explained by this Court in Ravinder Singh (supra) that s. 28(iv) can be invoked

only where the benefit or perquisite is other than cash and that the term "benefit or amenity or

perquisite" cannot relate to cash payments. In the instant case, the AO has determined the monetary

value of the benefit stated to have accrued to the assessee by adding a sum that constituted 18 per cent

simple interest on the deposit. On the strength of Ravinder Singh, it must be held that this rules out the

application of s. 28(iv) of the Act.

9. Sec. 23(1)(a) is relevant for determining the income from house property and concerns

determination of the annual letting value of such property. That provision talks of "the sum for which

the property might reasonably be expected to let from year to year." This contemplates the possible

rent that the property might fetch and not certainly the interest in fixed deposit that may be placed by

the tenant with the landlord in connection with the letting out of such property. It must be remembered

that in a taxing statute it would be unsafe for the Court to go beyond the letter of the law and try to read

into the provision more than what is already provided for. The attempt by learned counsel for the

Revenue to draw an analogy from the WT Act, 1957 is also to no avail. It is an admitted position that

there is a specific provision in the WT Act which provides for considering of a notional interest

whereas s. 23(1)(a) contains no such specific provision.

10. We therefore, find no infirmity in the order of the Tribunal and are of the view that no subsequent (

sic. - substantial) question of law arises.

11. The appeals are dismissed.