



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

32.

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Judgment reserved on : 3rd December, 2007

Date of decision : 10<sup>th</sup> December, 2007

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ITA 794/2007

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? ✓
2. To be referred to the reporter or not? ✓
3. Whether the order should be reported in the Digest? ✓

**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



the appeals raise an identical question, they are being disposed of by the 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.

3. 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.



*Hotels Limited 53 ITR 450* as well as the decision of this Court in *Ravind.*

*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 27<sup>th</sup> November, 2000 on certain



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 clause (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 clause (b) or clause (c) of this subsection, 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."

**"Section 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) xxx xxx xxx

[(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;"]



and is distinct and different from income from house property. It talks of the value of any benefit or 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* that Section 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% simple interest on the deposit. On the strength of *Ravinder Singh*, it must be held that this rules out the application of Section 28(iv) of the Act.

9. Section 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 Wealth Tax Act, 1957 is also to no avail. It is an admitted position that there is a specific provision in the Wealth Tax Act which provides for



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

11. The appeals are dismissed.

A handwritten signature in black ink, appearing to be 'S. Muralidhar'.

S. MURALIDHAR, J

A handwritten signature in black ink, appearing to be 'Madan Lokur'.

MADAN B. LOKUR, J

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DECEMBER 10, 2007  
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