



***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : November 10, 2006
Date of Decision : January 04, 2007.

+ ITA No 1146 of 2006

COMMISSIONER OF INCOME TAX Appellant
! Through Ms. Prem Lata Bansal, Advocate

versus

\$ JAYPEE HOTELS LTD. ... Respondent
^ Through Mr. Ajay Vohra with
Ms. Kavita Jha, Advocates

and
ITA No 1223 of 2006

! COMMISSIONER OF INCOME TAX Appellant
Through Ms. Prem Lata Bansal, Advocate

versus

\$ JAYPEE HOTELS LTD. ... Respondent
^ Through Mr. Ajay Vohra with
Ms. Kavita Jha, Advocates

CORAM:

**HON'BLE MR. JUSTICE VIKRAMAJIT SEN
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? ✓

ORDER

1. These two appeals by the Revenue are directed against the common order dated 27.1.2006 passed by the Income tax



respectively. The present cases involve the question whether the expression "total receipts of the business" in Section 80HHD (3) of the Income Tax Act ('Act') relates only to the receipts concerning the services provided by the assessee to foreign tourists or the receipts relating to all the business activities of the assessee.

2. The facts in brief are that the assessee is engaged in the business of running two five star hotels in Delhi styled as Vasant Continental and Siddhartha Continental. As part of the fulfilment of the conditions laid down by the Department of Tourism, the assessee obtained from the Reserve Bank of India (RBI) a Restricted Money Changing License. For the Assessment Year 1994-95, the assessee's total foreign exchange receipts were Rs. 9,14,39,765/- which included foreign exchange receipts in the sum of Rs. 3,96,43,504/- through money changing activity. The assessee claimed a deduction under Section 80HHD of the Act in the sum of Rs. 2,64,36,296/-. The Assessing Officer (AO) excluded the sum received by the assessee through its money changing activity for the purposes of computing the deduction under Section 80HHD on the ground that this could not qualify as service rendered to foreigners. Thus the AO worked out a reduced deduction under Section 80HHD for the AY 1994-95. For the AY 1995-96, the AO applied the same yardstick and



3. Before the ITAT, the assessee advanced two submissions. The first was that money changing activity was also a service rendered to the foreigners and therefore could not be excluded for the purposes of calculating the deduction under Section 80HHD. The ITAT did not agree with this submission and held that the assessee had been rightly denied deduction under Section 80HHD in terms of sub-section (3) thereof. The second and alternative submission was that while applying the formula under Section 80HHD (3), if the assessee's foreign exchange receipts for the money changing activity were to be excluded from the numerator (foreign exchange receipts) of the multiplier, then such amount should also be deducted from the denominator (i.e., total receipts of business). This alternative submission found favour with the ITAT which held as follows:

“At the same time we see force in the alternative contention of the assessee that these receipts are similarly required to be excluded from the total business receipts of the assessee for the purposes of deduction under section 80HHD. According to the revenue there is no application of the provisions 80HHD on the receipts of foreign exchange in the case of money changing activity of the assessee. That being so, these receipts are required to be excluded altogether from the



exclude these receipts from total business receipts as well while working out deduction under section 80HHD admissible to the assessee if not already done."

The ITAT, therefore, restored the matter to the file of the AO for computation of amount of deduction in consonance with the above position in law.

4. The Revenue is in appeal before us contending that the expression "total receipts of the business" in sub-section (3) of Section 80HHD cannot exclude the foreign exchange receipt of the assessee on account of the money changing activity.

5. In a detailed judgment dated 7.12.2006 in ITA Nos.936 and 963 of 2006 (*Commissioner of Income Tax v. Lotus Trans Travels Pvt. Ltd.*), we have rejected a similar contention and held that the expression "total receipts" for the purposes of the denominator of the multiplier applied for the purposes of computation under sub-section (3) of the Section 80HHD, will admit of the same construction as the numerator (foreign exchange receipts). In doing so, this Court has adopted the reasoning of the High Court of Bombay in *CIT v. Sudarshan Chemicals Industries Ltd.* [2000] 245 ITR 769 (Bom) which has been followed by the Calcutta High Court in



Commissioner of Income Tax v. Wheels India Limited
[2005] 197 CTR 284 (Mad.) and the Kerala High Court in
Commissioner of Income Tax v. K.Rajendranathan Nair
[2004] 265 ITR 35 (Ker).

6. In view of the above judgment, we find that the conclusion reached by the ITAT does not call for any interference. The ITAT's interpretation of the expression "total receipts" in sub-section (3) of Section 80HHD is in consonance with our aforementioned judgment.

7. Accordingly, no substantial question of law arises in these appeals and they are dismissed as such with no orders as to costs.

Vikramajit Sen, J.

S. Muralidhar, J.