



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

Reserved on : 11th December, 2012
Date of Decision : 10th January, 2013

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+ **W.P.(C) 8825/2011**

+ **W.P.(C) 7206/2012**

RAMBAGH PALACE HOTELS PRIVATE LIMITED Petitioner
 Through: **Mr. C. S. Aggarwal, Sr. Advocate**
 with **Mr. Prakash Kumar, Advocate.**

versus

DEPUTY COMMISSIONER OF INCOME TAX,
NEW DELHI Respondent
 Through: **Mr. Sanjeev Rajpal, Sr. Standing**
Counsel.

+ **W.P.(C) 7513/2010**

MAHARAJ JAI SINGH Petitioner
 Through: **Mr. C. S. Aggarwal, Sr. Advocate**
 with **Mr. Prakash Kumar, Advocate.**

versus

INCOME TAX OFFICER Respondent
 Through: **Mr. Sanjeev Rajpal, Sr. Standing**
Counsel.

+ **W.P.(C) 7516/2010**

MAHARAJ PRITHVIRAJ SINGH Petitioner
 Through: **Mr. C. S. Aggarwal, Sr. Advocate**
 with **Mr. Prakash Kumar, Advocate.**

versus

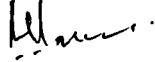
INCOME TAX OFFICER Respondent
 Through: **Mr. Sanjeev Rajpal, Sr. Standing**
Counsel.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR



R.V. EASWAR, J.:

For detailed order see W.P.(C) 7023/2010.


(R.V. EASWAR)
JUDGE


(S. RAVINDRA BHAT)
JUDGE

JANUARY 10, 2013

vld



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+ **W.P.(C) 7023/2010**
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RAMBAGH PALACE HOTELS PRIVATE LIMITED Petitioner
 Through: **Mr. C. S. Aggarwal, Sr. Advocate**
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Counsel.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR



R.V. EASWAR, J.:

These are five writ petitions of which three have been filed by M/s Rambagh Palace Hotels Pvt. Ltd. and one each by Maharaja Jai Singh and Maharaja Prithviraj Singh. They are all directed against the reassessment notices issued by the respondents under Section 148 of the Income Tax Act, 1961. We may first take up the writ petitions filed by M/s Rambagh Palace Hotels Pvt. Ltd., which is hereinafter referred to as "hotel". These are WP(C) Nos.7023 of 2010, 8825 of 2011 and 7206/2012 relating to the assessment years 2003-04, and 2004-05 and 2005-06 respectively.

2. In WP(C) No. 7023/2010 which relates to the assessment year 2003-04 the facts in brief are that the petitioner-hotel is a private limited company incorporated on 15.7.1972 and regularly assessed to income tax from the assessment year 1974-75. It is engaged in the business of running hotels consisting of five independent units i.e. Rambagh plants, the Sawai Madhopur Lodge, the Rambagh Lodge, the Airport Cafeteria and SMS Hotel. It filed a return of income declaring a loss of ₹4,29,22,365/-. The return was processed under Section 143(1) and an intimation was issued on 18.3.2004. Thereafter, it was selected for scrutiny and after issuing notices under Sections 143(2) and 142(1) and after examining the details furnished by the petitioner, an assessment order was passed under Section 143(3) in which the loss was computed at ₹4,12,89,641/-. The order was passed on 27.12.2005. On 12.9.2006 the assessing officer passed a rectification order under Section 154 reducing the loss to ₹4,01,80,811/-.



3. On 26.3.2010 i.e. after the lapse of four years from the end of the relevant assessment year, the respondent issued a notice under Section 148 of the Act to reopen the assessment on the ground that income chargeable to tax had escaped assessment. The petitioner-hotel filed a return of income in response to the notice declaring the loss at the figure at which the respondent had determined it by the order of rectification. It also requested the respondent to supply a copy of the reasons recorded for reopening the assessment.

4. On 18.8.2010 the reasons recorded were supplied to the petitioner. The reasons are as under :

“11. Reasons for the belief that income has escaped assessment:

A complaint against the assessee company has been filed by Shri Raj Kumar Devraj, one of the Directors of the assessee company vide which it has been pointed out that more than ₹100 crores of rupees has been siphoned by Maharaja Prithvi Raj & Maharaja Jai Singh out of the companies accounts which require the proper investigation & scrutiny of accounts of the company for the last 6 years. It has further been alleged by the complainant before the company law board in petition that Maharaja Prithviraj and Maharaja Jai Singh in the year 2002-03, 2003-04, 2004-05, 2006-07, 2007-08 and 2008-09 had debited of ₹50 crores approx. under the head repairs and maintenance of bldg. and ₹50 crores approx. towards addition to the fixed assets and this sum has been withdrawn and siphoned by illegal withdrawals with the connivance of the contractors appointed in consultation and for the personal benefit of Maharaja Prithviraj & Maharaja Jai Singh which require proper investigation and scrutiny of the accounts of the company and all the expenses illegally withdrawn by Maharaja Prithviraj and Maharaja Jai Singh are of capital in nature should be disallowed. Further it has been alleged that under the head traveling conveyance from the year 2002-03 to 2007-08, a sum of approx. ₹5 crores has been illegally withdrawn and siphoned out by Maharaja Prithviraj and Maharaja Jai Singh out of company fund. These expense are not related to the business of the company as the company is not procuring any business from outside India & as per



terms of the operational agreement with Indian Hotel company Ltd. (chain of Taj group hotels) company do not have to incur any expenditure for foreign tourist and not to meet any travel agent because all the expenses relating to business operation of the company is being looked after by Indian Hotel Company Ltd.

In view of the above facts, I have reasons to believe that an amount of ₹9,09,15,751/- has escaped assessment in the A.Y. 2003-04.

1.	Which comprises of expenses towards repair & maintenance	
	Building	4,50,15,315/-
	Machinery	45,54,181/-
	Others	<u>28,39,563/-</u>
		5,24,09,060/-
2.	Traveling	₹68,57,669/-
3.	Addition to fixed assts	<u>₹3,16,49,022/-</u>
	Totaling to	₹9,09,15,751/-

Thus the assessee has failed to disclose all material facts truly and fully that were necessary for assessment. Here it is relevant to mention the explanation 1 in section 147 that states that "production before the AO of account books or other evidence from which material evidence could with the diligence have been discovered by the AO will not necessarily amount to disclosure with the meaning of the foregoing proviso.

In view of above facts, I have reason to believe that income chargeable to tax amounting to ₹9,09,15,751/- has escaped assessment in the case and the same is to be brought to tax under section 147/ 148 of the I.T. Act. Sanction for issue of notice u/s 148 as prescribed u/s 151, to re-assess such income and also any other income chargeable to tax which has escaped assessment -and which comes to the notice subsequently during the course of assessment proceedings, may kindly be accorded.

(Signature of Officer)
Sd/-



Dated: 15.03.2010

Name : B. SRINIVAS KUMAR
Designation : DCTI, Circle-15(1)
New Delhi"

5. The petitioner filed objections to the initiation of reassessment proceedings as envisaged by the judgment of the Supreme Court in *G.K.N. Driveshafts, (India) Ltd. Vs. ITO & Ors.* (2003) 259 ITR 19 (SC). In these objections the petitioner submitted that all the details and information required by the assessing officer were submitted at the time of the original assessment proceedings including information regarding the expenses under the heads, repairs and maintenance, additions to fixed assets etc. and there was no failure to furnish full and true particulars, that there was no new material or facts to justify the reopening of the assessment, and that the complaint stated to have been made by Raj Kumar Devraj was wholly extraneous and irrelevant and was not valid material in the eyes of law and that in these circumstances the respondent had no jurisdiction to reopen the assessment. The contentions were also sought to be supported by reference to several decisions on the subject. These objections were disposed of by the respondent by order dated 28.9.2010. In this order the respondent stated that there was fresh material by way of information received from Raj Kumar Devraj pointing to escapement of income chargeable to tax and thus he had jurisdiction to reopen the assessment. He further stated that the contents of the information also showed that the assessee did not disclose full and true particulars or primary facts at the time of the original assessment. The petitioner's objections were accordingly dismissed.

6. The contention of the petitioner before us is that since the assessment is sought to be reopened after the lapse of four years from the end of the



assessment year, it was the duty of the assessing officer to show that the petitioner had failed to furnish primary facts fully and truly at the time of the original assessment and that this duty has not been discharged by him. It was contended that the complaint made by Raj Kumar Devraj which formed the basis of the reopening of the assessment was only a bundle of allegations of irregularities and there was no finding that such irregularities have actually been committed by the petitioner. Accordingly, it is contended that the complaint cannot constitute tangible material for reopening the assessment.

7. As regards full and true disclosure, our attention was drawn to page 117 of the writ petition which sets out Schedule "L" to the profit and loss account for the year ended 31.3.2003 in which repairs and maintenance expenses relating to building, machinery and other assets have been separately shown. At page 120, the petitioner has disclosed the "significant accounting policies and notes to accounts". Under the head "fixed assets", the petitioner has stated that all fixed assets are stated at their original cost of acquisition including incidental expenses related to acquisition and installation of concerned assets and are stated net of accumulated depreciation.

8. On 16.9.2005, the respondent had issued a questionnaire to the petitioner requiring it to submit details in respect of 16 queries; item no.10 of the questionnaire relates to addition of ₹1,71,85,084/- to fixed assets and the petitioner was asked to "submit details of all assets added along with date of purchase, value and justify liability of depreciation as per IT Rules, produce original bills for verification". Query No.14 relates to details of expenses. The petitioner was called upon to provide details of several items of expenses and justify their allowability. This includes expenses of ₹4,50,15,315/- as repairs



and maintenance to building, ₹45,54,152/- as repairs and maintenance to machinery and ₹28,39,563/- as repairs and maintenance of other assets. The petitioner's reply is from pages 183 to 201 of Annexure 8 to the writ petition. The reply is dated 9.12.2005. The assessee has enclosed the entire annexures to the profit and loss account and balance sheet to this letter which show the summary of additions in different hotels owned by it. In respect of other fixed assets, full details such as the name of the party from whom the asset was purchased, the brief particulars of the asset, the bill number, date and the amount paid have all been filed in the form of separate charts. So far as the repair and maintenance expenses are concerned, a separate letter dated 21.12.2005 was filed with the assessing officer containing the details which run from page 270 to page 286. In these pages the petitioner has furnished details in respect of the repairs and expenses exceeding ₹1,000/- per bill.

9. Since a perusal of the reasons recorded showed that one of the allegations in the complaint was that the petitioner had siphoned off monies as travelling and conveyance from the years 2002-03 to 2007-08 and that such expenses were not related to the petitioner's business because as per the terms of the operational agreement with the Taj Group of Hotels, the petitioner does not have to incur any expense on foreign tours. We called upon the ld. counsel for the petitioner to show the disclosure relating to the foreign travelling expense incurred by the petitioner for the year ended 31.3.2003. It was stated by him that no particulars about the foreign travel expenses were called for by the assessing officer and therefore no particulars were filed except those required to be filed under the head "expenditure in foreign currency". Such expenditure was shown as note No.11 under the head "significant accounting



policies and notes to accounts” in schedule “O”. These details are at page 125. Item “b” under note 11 shows that expenditure on foreign currency for foreign travel amounted to ₹12.58 lakhs. No other details were filed by the petitioner in respect of the foreign travel expenses at the time of the original assessment.

10. The above narration of the facts and the submissions would show that at least in respect of the foreign travel expenses, no details were furnished by the assessee at the time of the original assessment, except a bare noting that a part of such expenditure was incurred in foreign currency. No details of the place visited and the purpose of the visit and how the visit was connected to the business of the petitioner were furnished. The assessee was under a duty to disclose these particulars fully and truly at the time of the original assessment; this is particularly so because under the arrangement with the Taj Group of Hotels it would appear that the petitioner was not under any obligation to incur the expenditure. Our attention was not drawn by the ld. counsel for the petitioner to any particular document or record in which the full and true particulars of the foreign travel expenses were submitted by the petitioner at the time of the original assessment; nor was it disputed that there was such a clause in the agreement with Taj group. There was thus a failure on the part of the petitioner which would attract the first proviso to Section 147 of the Act. The contention that the reopening was prompted by a mere allegation of irregularities without any tangible material or finding is not acceptable. The complaint has been filed by Raj Kumar Devraj-one of the directors-before the Company Law Board and some credibility has to be accorded to the same as it was filed before a statutory authority competent to deal with the complaint; it must be taken to have been filed with some responsibility. There is also



mention in the reasons recorded to an agreement between the petitioner and the Taj Group of Hotels under which the responsibility of incurring foreign travel expenses is with the Taj Group. It is also a fact that the petitioner did not furnish any particulars relating to the foreign tours and their connection with the business. In these circumstances, we are not able to say that the reopening of the assessment is without jurisdiction.

11. So far as the assessment year 2004-05 is concerned in WP(C) No.8825/2011, the return declaring loss of ₹3,66,34,670/- was first processed and accepted under Section 143(1) but was later selected for scrutiny and notices were issued to the petitioner under Sections 143(2) and 142(1). Questionnaires were also issued calling for details relating to fixed assets, loans and advances, opening and closing inventory, sundry debtors, loss on sale of fixed assets, repairs and maintenance expenses, details of travelling expenses for foreign visits etc. and these queries were answered by the petitioner and the information was submitted. The assessment was completed under Section 143(3) on 28.11.2006 on a loss of ₹3,41,42,535/-.

12. On 30.3.2011 notice under Section 148 was issued in response to which the petitioner filed a return declaring a loss as assessed under Section 143(3); it also filed detailed objections to the validity of the reassessment proceedings. The objections were disposed of by the respondent on 23.11.2011. The respondent did not agree with the objections and held that the reassessment was validly initiated. The contention of the petitioner is the same as in WP(C) No.7023/2010.



13. In response to the questionnaire issued by the assessing officer, the petitioner submitted a reply dated 16.10.2006 in respect of 10 items which included details of additions/deletions to the fixed assets along with the name of the party, address, description of assets, bill number and date etc., bifurcation of the fixed assets into those acquired before 30th September, 2003 and after that date, etc. There were no details furnished in this letter regarding the foreign tour expenses. By letter dated 31.10.2006 the petitioner submitted, inter alia, details of repairs and maintenance expenses of building, machinery and other assets as well as the details of the foreign travel expenses of the directors and staff and stated that the foreign travel was undertaken for the purpose of business and out of commercial expediency. This letter was followed up by another letter dated 22.11.2006 in which it was stated that the copies of the resolutions passed in the board meeting authorizing the foreign travel for the purpose of the business and approving the incurring of the expenses were being submitted, along with the visa details of the persons who undertook the foreign travel as well as the letter to the money changer for release of the foreign exchange for the purpose of the travel.

14. We are concerned with the assessment year 2004-05 and the period of four years from the end of that assessment year expired on 31.3.2009. The notice under Section 148 was issued on 30.3.2011 i.e., beyond the period of four years. This is therefore a case of the first proviso to Section 147. Therefore, action for reopening the assessment can be taken only if there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. The reasons for reopening as recorded by the assessing officer are identical to those recorded in respect of the assessment



year 2003-04 in WP(C) No.7023/2010. One of the reasons recorded was that expenditure was debited under the head “repairs and maintenance of building and additions to fixed assets”, but the amounts were actually siphoned off by illegal withdrawals with the connivance of the contractors appointed in consultation and for the personal benefit of Maharaja Prithviraj Singh and Maharaja Jai Singh. However, the particulars relating to the additions to the assets for the year ended 31.3.2004 are found given under cover of the letter dated 16.10.2006 written by the petitioner in response to the queries raised by the respondent. Item No.7 of this letter reads as follows :

“7(a). Details of additions/ deletions to fixed assets with complete description are given in Tax audit Report. However, we are enclosing one more copy of the addition/ deletion to fixed assets along with name of the Party, address, description of assets, Bill No. and date, amount, date of receipt in the premises with date of installation and putting it into use.

(b) Details of additions made to the fixed assets bifurcating the same into first half and second half as per the Income-tax Act, 1961 have been enclosed as per Annexure 2.1 to 2.6 of the Tax Audit Report.”

The annexures to the tax audit report in Form No.3CA contain the aforesaid details running into several pages (about 20 pages) in which the particulars of the asset, the date of purchase, cost, depreciation, profit and the closing written down value are all given. The details relating to the foreign travel expenses of the directors and the staff were given under cover of letter dated 31.10.2006. The copies of the board resolution authorizing the foreign travel, the visa details, details for release of foreign exchange etc. were furnished by letter dated 22.11.2006. All these details were filed in the course of the original



assessment proceedings. By letter dated 27.11.2006 the petitioner submitted further details to the assessing officer in response to certain queries raised by the latter as to why certain items of expenditure on account of repairs and maintenance of building, plant and furniture should not be disallowed as capital in nature. These queries related to R & M Building amounting to ₹7,74,302/-, details relating to R & M Sanitary Fittings amounting to ₹2,56,572/- and details relating to R & M Electricals amounting to a sum of ₹6.87 lakhs.

15. It is thus seen that in respect of the assessment year 2004-05, not only did the petitioner furnish all the relevant details relating to the purchase of fixed assets, repairs and maintenance of buildings but also the details relating to the foreign travel expenses. The proceedings relating to the original assessment also show that the assessing officer had raised queries regarding repairs and maintenance of building, plant and furniture which were answered by the petitioner. No query would appear to have been raised in relation to the foreign travel expenses in regard to which the petitioner had furnished the relevant details. In these circumstances, it cannot be said that there was any failure on the part of the petitioner to submit full and true particulars at the time of the original assessment. It was for the assessing officer to examine the details and draw the appropriate inferences. The notice under Section 148 issued for the assessment year 2004-05 is therefore without jurisdiction.

16. We now take up WP(C) No.7206 of 2012 relating to the assessment year 2005-06. In respect of this year, the return of income filed by the petitioner on 31.10.2005 declaring Nil income was processed under Section 143(1) and an intimation was issued on 6.6.2006. On 30.3.2012 notice under Section 148 was issued reopening the assessment on the ground that income chargeable to tax



had escaped assessment. The reasons recorded by the respondent for reopening the assessment not only referred to the complaint filed by Raj Kumar Devraj before the Company Law Board regarding irregularities in the accounts of the petitioner, but also contains the following further reasons.

"In the Assessment Year 2005-2006, the company has claimed repair and maintenance of ₹78384501/-, addition of fixed assets of ₹3,27,44,758/- and expenses on account of travelling ₹1,00,57,098/- including foreign travelling. The assessee has an agreement with TAJ Group and the brand name is used who runs the hotel. The travelling expenses of ₹1,00,57,098/- is highly unreasonable as the brand name of TAJ is already used by the assessee and they market the hotel business accordingly. Hence, for the director to claim this huge expenses puts the weight age on the complaint which appears to be reasonable and bonafide in this regard. The repair and maintenance expenses of ₹7,83,84,501/- appears to be on higher side as the property is maintained and run by TAJ group. Even if the repair and maintenance expenses are established by the assessee as bona fide, the same would be treated s(sic) capital expenditure considering the volume of repair and maintenance being carried out by the assessee year after years and only depreciation eligible would be applicable. The gross profit to turnover ratio is 25.16% and NP to turnover ratio is 2.44%. The hotel is run professionally by the TAJ group. However, the NP to turnover ratio is very skewed on the contrary which makes the allegations of the complainants bonafide and reasonable especially when the allegations are made by the close family relative. The market value of the property of assessee co. is worth ₹100 crs. and more wherein even the rental income itself will fetch higher than what assessee has shown as income in the A.Y. 2005-2006. In view of the above facts, I have reasons to believe that an amount of ₹12,11,86,357/- has escaped assessment in the AY 2005-06.

In view of above facts, I have reason to believe that income chargeable to tax amounting to ₹12,11,86,357/- has escaped



assessment in the case and the same is to be brought to tax under section 147 of the I.T. Act as there has been a failure on the part of the assessee to disclosed fully and truly all material facts necessary for its assessment in the AY 2005-06. Section for issue of notice u/s 148 as prescribed u/s 151, to re-assessee such income which has escaped assessment, may kindly be accorded."

After carefully considering the rival submissions, we are of the view that the assessing officer has properly assumed jurisdiction to reopen the assessment. There was no scrutiny assessment under Section 143(3) in the first instance; the return filed by the petitioner was merely processed under Section 143(1). Even so, it is necessary that the assessing officer must have "reasons to believe" that income chargeable to tax had escaped assessment. There must be tangible material before him on the basis of which he could form the belief, bona fide and in good faith, that there was escapement of income. The material must have a live link or nexus with the formation of the belief. The belief cannot be a mere pretence. These are the most basic and indispensable requirements for the validity of the notice under Section 148. These requirements are satisfied in the present case. There was a complaint filed by one of the directors i.e. Raj Kumar Devraj, before the Common Law Board alleging irregularities such as illegal siphoning off of the company's funds by the other two directors in the guise of fixed assets, repairs and maintenances, travelling expenses etc. This complaint constitutes tangible material on the basis of which action to reopen the assessment can be taken in good faith; the belief entertained by the assessing officer on the basis of the complaint which has been filed with some responsibility by one of the directors of the petitioner, cannot be said to be a mere pretence nor can the belief be said to be divorced from the material. The complaint constitutes relevant material for the belief. In these circumstances,



we are not able to say that the notice issued under Section 148 was without jurisdiction. The fact that the petitioner submitted all the details to the assessing officer along with the return of income is not relevant where only an intimation under Section 143(1) is issued after merely processing the return without any scrutiny. There should however be reason to belief that income had escaped assessment and this condition has been satisfied in respect of the assessment year 2005-06. In these circumstances, we uphold the notice issued under Section 148.

17. WP(C) No.7513/2010 and 7516/2010 have been filed by Maharaja Jai Singh and Maharaja Prithviraj Singh respectively questioning the validity of the reopening notices issued by the respondent under Section 148 for the assessment year 2003-04. There is no material difference between the facts of the two writ petitions. Subsequently, when notices under Section 143(2) were issued to the petitioners and they pointed out that the notices were barred by time, they were informed that the said notices were issued pursuant to reassessment proceedings initiated by notices dated 31.3.2010 under Section 148 of the Act and copies of the notices were served on the petitioners. The objections filed by the petitioners to the reassessment notices were rejected on 12.10.2010 (in both the cases) and it is against those orders and the notices issued under Section 148 that the present petitions have been filed.

18. The reasons recorded for reopening the assessments are common in both the cases and are as under :

"A complaint against the assessee company has been filed by Shri Raj Kumar Devraj, one of the Directors of the assessee company vide which it has been pointed out that more than ₹100 crores of rupees has



been siphoned by Maharaja Prithvi Raj & Maharaja Jai Singh out of the companies accounts which require the proper investigation & scrutiny of accounts of the company for the last 6 years. It has further been alleged by the complainant before the company law board in petition that Maharaja Prithviraj and Maharaja Jai Singh in the year 2002-03, 2003-04, 2004-05, 2006-07, 2007-08 and 2008-09 had debited of ₹50 crores approx. under the head repairs and maintenance of bldg. and ₹50 crores approx. towards addition to the fixed assets and this sum has been withdrawn and siphoned by illegal withdrawals with the connivance of the contractors appointed in consultation and for the personal benefit of Maharaja Prithviraj & Maharaja Jai Singh which require proper investigation and scrutiny of the accounts of the company and all the expenses illegally withdrawn by Maharaja Prithviraj and Maharaja Jai Singh are of capital in nature should be disallowed. Further it has been alleged that under the head traveling conveyance from the year 2002-03 to 2007-08, a sum of approx. ₹5 crores has been illegally withdrawn and siphoned out by Maharaja Prithviraj and Maharaja Jai Singh out of company fund. These expense are not related to the business of the company as the company is not procuring any business from outside India & as per terms of the operational agreement with Indian Hotel company Ltd. (chain of Taj group hotels) company do not have to incur any expenditure for foreign tourist and not to meet any travel agent because all the expenses relating to business operation of the company is being looked after by Indian Hotel Company Ltd. The funds of the company are being used by the director namely Sh. Maharaja Prithviraj for personal benefit.

In view of the above facts, I have reasons to believe that 50% of amount of ₹ ₹9,09,15,751/- i.e. ₹4,54,57,875/- has been used for personal use by Maharaja Jai Singh from P&L a/c of M/s. Ram Bagh Palace Ltd. and should have been offered for tax. The fund misappropriated are from the following accounts.

1. Amount misappropriated from
repair & maintenance

Building	4,50,15,315/-
Machinery	45,54,181/-
Others	<u>28,39,563/-</u>
	5,24,09,060/-

2. Amount used for travelling ₹68,57,669/-



3.	<i>Addition to fixed assts</i>	<u>₹3,16,49,022/-</u>
	<i>Totaling to</i>	<u>₹9,09,15,751/-</u>

Thus the assessee has failed to disclose all material facts truly and fully that were necessary for assessment. Here it is relevant to mention the explanation 1 in section 147 that states that "production before the AO of account books or other evidence from which material evidence could with the diligence have been discovered by the AO will not necessarily amount to disclosure with the meaning of the foregoing proviso.

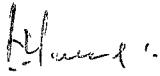
In view of above facts, I have reason to believe that income chargeable to tax amounting to ₹4,54,57,875/- has escaped assessment in the case of Maharaja Jai Singh as the receipts have either to be taken as income on taxable perquisites and the same is to be brought to tax under section 147/ 148 of the I.T. Act. Sanction for issue of notice u/s 148 as prescribed u/s 151, to re-assess such income and also any other income chargeable to tax which has escaped assessment and which comes to the notice subsequently during the course of assessment proceedings, may kindly be accorded."

19. We have no hesitation in upholding the jurisdiction of the respondent in issuing the notices under Section 148. We have already held in the writ petitions filed by M/s Rambagh Palace Hotels Pvt. Ltd. that the complaint filed by one of the directors of the hotel, i.e. Raj Kumar Devraj in the Company Law Board alleging irregularities in the accounts of the hotel constitutes tangible and valid material on the basis of which the assessing officer can reasonably form a prima facie belief that income chargeable to tax had escaped assessment. One of the allegations in the complaint is that funds of the hotel were being siphoned off by the present petitioners in the guise of purchase of fixed assets, repairs and maintenance expenses and foreign travel expenses. The reasons recorded referred to the allegations in the complaint from which the respondent has arrived at a tentative belief that 50% of the amounts allegedly siphoned off by



the petitioners have to be treated as income that has escaped assessment in each of their assessments. If the complaint can constitute tangible material for reopening the assessments of the hotel, it can equally constitute tangible material giving rise to the belief that the amounts allegedly siphoned off by the present petitioners from the hotel had escaped assessment in their hands. It must be remembered that we are not at this stage concerned with the merits of the matter. We are at this stage concerned only with the question whether a prima facie belief regarding escapement of income can be entertained by the respondent on the basis of the complaint filed by the Company Law Board by Raj Kumar Devraj, one of the directors of the hotel. Our answer is in the affirmative. Accordingly, we uphold jurisdiction of the respondent to reopen the assessments of the petitioners.

In the result, W.P. (C) Nos.7023/2010, 7206/2012, 7513/2010 and 7516/2010 are dismissed and W.P. (C) No.8825/2011 is allowed. No costs.


(R.V. EASWAR)
JUDGE


(S. RAVINDRA BHAT)
JUDGE

JANUARY 10, 2013
vld



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

+ REVIEW PET. 81/2013 IN W.P.(C) 7206/2012 WITH C.M.
APPL. 1700/2013

RAMBAGH PALACE HOTEL
PVT. LTD. AND ANR.

..... Petitioner

Through: Mr. C. S. Aggarwal, Sr. Advocate
with Mr. Prakash Kumar and Mr.
Sheel Vardhan, Advocates.

versus

DEPUTY COMMISSIONER OF
INCOME-TAX, NEW DELHI

..... Respondent

Through: Mr. Rohit Madan, Sr. Standing
Counsel with Mr. P. R. Choudhry
and Mr. Akash Vajpai, Advocates.

+ REVIEW PET. 84/2013 IN W.P.(C) 7023/2010

RAMBAGH PALACE HOTELS PVT. LTD. Petitioner

Through: Mr. C. S. Aggarwal, Sr. Advocate
with Mr. Prakash Kumar and Mr.
Sheel Vardhan, Advocates.

versus

DEPUTY COMMISSIONER OF
INCOME TAX, NEW DELHI

..... Respondent

Through: Mr. Rohit Madan, Sr. Standing
Counsel with Mr. P. R. Choudhry
and Mr. Akash Vajpai, Advocates.

+ REVIEW PET. 80/2013 IN W.P.(C) 7513/2010 WITH C.M.
APPL. 1699/2013

MAHARAJ JAI SINGH

..... Petitioner

Through: Mr. C. S. Aggarwal, Sr. Advocate
with Mr. Prakash Kumar and Mr.
Sheel Vardhan, Advocates.



versus

INCOME TAX OFFICER Respondent
Through: Mr. Rohit Madan, Sr. Standing
Counsel with Mr. P. R. Choudhry
and Mr. Akash Vajpai, Advocates.

+ REVIEW PET. 79/2013 IN W.P.(C) 7516/2010 WITH C.M.
APPL. 1698/2013

MAHARAJ PRITHVIRAJ SINGH Petitioner
Through: Mr. C. S. Aggarwal, Sr. Advocate
with Mr. Prakash Kumar and Mr.
Sheel Vardhan, Advocates.

versus

INCOME TAX OFFICER Respondent
Through: Mr. Rohit Madan, Sr. Standing
Counsel with Mr. P. R. Choudhry
and Mr. Akash Vajpai, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER
17.04.2014

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The petitioner seeks review of a common judgment and order dated 10.01.2013 by which notices issued by the respondent under Section 148 of the Income Tax Act, 1961 were upheld and the writ petitions were dismissed. It is contended on behalf of the review petitioner by senior counsel that the reference to Mr. Rajkumar Devraj describing a director of the petitioner-company is without factual foundation. It is urged that the said individual is a complete stranger and had complained to the



income tax authorities about alleged evasion. Having regard to these circumstances, it is submitted that though not strictly assumption of fact which has been completely gone into. It was contended – with specific reference to para 10 of the judgment of this Court that the expenses incurred towards brand promotion by foreign travel for relevant years was an aspect which had been examined during the course of regular assessment proceedings. Learned counsel submitted that in accordance with the agreement arrived between the assessee and the Taj Group (Indian Hotels) Ltd. which was originally entered into on 07.03.1975, these expenses had to be incurred and were, therefore, allowed to the assessee, particular reference is made to Section 2 of the said agreement, which is in the following terms: -

“Section 2 – The Operating Company agrees to use its good offices and endeavour to obtain for the hotel and its guests the benefits and advantages of worldwide sales, reservation/ credit card systems available to other hotels managed, operated or owned by the Operating Company or otherwise by virtue of agreement/ arrangement with any group or chain of hotels of international repute. All expenses incurred in respect of the foregoing shall be on account of and at the cost of the Owning Company.”

This Court has considered the submissions as to whether Mr. Rajkumar Devraj was a stranger or a director is not relevant since his description is not central to the issue decided. This Court was not even guided or influenced by the fact that being a director – a reference to such



status being made only at one place of the judgment income tax authorities impugned notice was consequently in order. Rather this Court went into merits of the contention that the Section 148 issued in this case were not justified, made by the assessee. Therefore, the argument that the misdescription of Mr. Rajkumar Devraj is without foundation.

So far as the second aspect that is the travel expenditure incurred towards foreign trips, this Court merely concluded that there was no supporting material to justify the claim of the assessee nor had the assessee made full and proper disclosure in the returns filed by it. It was in this context the Court stated in para 9 that the *“expenditure on foreign currency for foreign travel amounted to Rs.12.50 lakhs no other details were filed by the petitioner in respect of foreign travel expenses at the time of original assessment”*. Later it was also recorded that *“it is also a fact that the petitioner did not furnish any particulars related to foreign tours and their business connections”*.

So far as the condition in the agreement of 1975 obliging the assessee or its director to foreign travel goes this is what the Court had to say in *“our attention was not drawn by the ld. Counsel for the petitioner to any particular document or record in which the full and true particulars of the foreign travel expenses were submitted by the petitioner at the time of the original assessment; nor was it disputed that there was*



such a clause in the agreement with Taj group". As we see Section 2 of the agreement of 07.03.1995 nowhere states that such foreign travel should be undertaken annually or in a routine manner as urged to do. Learned senior counsel argued that understanding of the parties that such trips were mandatory and explanation which had been consistently accepted by the revenue. This Court does not express any opinion on what happened in the past or as to what was the understanding, which do not in any manner suggests the application which is the reason why the Court clearly recorded in para 10 that no condition or clause in the agreement admitted such a construction. For the above reasons, the Court is satisfied that no ground is made to review the judgment. Review petitions are accordingly dismissed.

A handwritten signature in black ink, appearing to read "S. Ravindra Bhat".

S. RAVINDRA BHAT, J

A handwritten signature in black ink, appearing to read "R.V. Easwar".

R.V.EASWAR, J

APRIL 17, 2014

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