



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

% Judgment delivered on : 24.11.2008

+ **ITA 1314/2008**

**COMMISSIONER OF INCOME TAX
DELHI-IV**

.....APPELLANT

versus

UPPAL HOTELS LTD

..... RESPONDEN

Advocates who appeared in this case:

For the Appellant : Mr R D Jolly

For the Respondent : Mr P N Monga with Mr Manu Monga

CORAM :-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This appeal pertains to the assessment year 2003-04. It is directed against the order dated 25.4.2008 passed by the Income Tax Appellate Tribunal. The Assessing Officer had made an addition of Rs 26,72,717/- on account of interest allegedly due on delay in payment of the installment of the consideration money. As per the assessee, the interest



did not accrue to it in as much as the original agreement dated 3.7.2002 had been modified by a letter dated 1.8.2002. It is not in dispute that if the letter dated 1.8.2002 is said to operate, then the interest would not have been due to the assessee. An issue sought to be raised by the learned counsel for the appellant is that the letter dated 1.8.2002 was an afterthought as held by the Assessing Officer and ought not to be relied upon.

2. On this aspect we find that the Assessing Officer had made several observations and the Commissioner of Income Tax (Appeals) had examined the comments of the appellant in respect of each of the observations as indicated in Paragraph 3 of his order. After considering the factual position and the comments of the appellant, the Commissioner of Income Tax (Appeals) did not agree with the Assessing Officer that the letter dated 1.8.2002 was an afterthought. He also observed that an agreement is enforceable in law only because the parties to the agreement choose to make their mutual rights enforceable. He also noted that if the parties in their wisdom amended some terms of the agreement and thereby altered their rights, the same could not be considered to be an afterthought.

3. The Tribunal observed that if the amendment to the agreement mentioned in the letter dated 1.8.2002 is taken into account, there would



have been no delay in making the payment of installment and consequently, the assessee would not have any right to receive any interest from the intending purchaser. Therefore, it could not be said that the said amount of interest had accrued in the eye of law so as to treat the same as income chargeable to tax. The Tribunal confirmed the finding of the Commissioner of Income Tax (Appeals) and as also the deletion of the addition of Rs 26,72,717/- which had earlier been made by the Assessing Officer on notional basis. It is obvious that both the Commissioner of Income Tax (Appeals) and the Tribunal have found as a fact that the agreement dated 3.7.2002 had been modified by the letter dated 1.8.2002. That being the position, no interest on the first installment could have accrued as per the agreement dated 3.7.2002 as modified by the letter dated 1.8.2002. No substantial question of law arises for our consideration. The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

November 24, 2008

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