IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No.5653/MUM/2011
(Assessment Year:1998-1999)

The Indian Hotels Company Limited
Mandlik House, Colaba
Mumbai – 400001, Maharashtra.
[PAN:AAACT3957G] ..... **Appellant**

Additional Commissioner of Income Tax Range 2(2), Mumbai Vs
Mumbai. ..... **Respondent**

Appearance

For the Appellant/Assessee	:	Shri V. Sridharan, Sr. Advocate Shri Ravi Sawana & Ms. Neha Sharma
For the Respondent/Department	:	Shri Hemanshu Joshi

Date

Conclusion of hearing	:	08.01.2025
Pronouncement of order	:	27.03.2025

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 14/06/2011, passed by the Commissioner of Income Tax (Appeals) - 5 [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had partly-allowed the appeal against the Assessment Order, dated 31/03/2006, passed under Section 143(3) read with Section 147 of the Act for the Assessment Year 1998-1999.

2. The Assessee has raised following grounds of appeal :

> *"1. On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) [CIT(A)'] has, legally*

erred in upholding the proceedings u/s 147 of the Income- tax Act, 1961 (the "Act').

2. *On the facts and in the circumstances of the case, the learned CIT(A) has, legally erred in not cancelling, quashing or annulling, the impugned assessment, inspite of inordinate delay of more than six years from the end of the Assessment Year in supplying the reasons for reopening*

3. *On the facts and in the circumstances of the case, the learned CIT(A) has, legally erred in not cancelling, quashing or annulling the impugned assessment order inspite of non-compliance of the decision of the Hon'ble Supreme Court in the case of G. K. N. Driveshafts 259 ITR 19 (SC)*

4. *Without prejudice to above grounds, and in the alternative, it is submitted that in view of the first proviso to section 147 of the Act and in view of absence of a categorical finding either in the reasons recorded or in the assessment order, that the appellant has failed to disclose fully and truly all material facts, no action of reassessment can be made after a period of four years from the end of the relevant Assessment Year.*

5 *On the facts and in the circumstances of the case, the learned CIT(A) has, legally erred in upholding the impugned assessment order, inspite of the fact that the said order was passed in violation of principles of natural justice*

6. *On the facts and in the circumstances of the case, the learned CIT(A) has, legally erred in confirming an addition u/s 68 of the Act, of USD 1.75 million (equivalent to Rs 6,25,61,785) received on account of operating fees, already recognised as income on accrual basis in an earlier year.*

7. *On the facts and in the circumstances of the case, the learned CIT(A) has, legally erred in confirming an addition u/s 68 of the Act, of Rs 1,05,34,940 received on account of operating fees, already recognised as income on accrual basis in an earlier year.*

8. *On the facts and in the circumstances of the case, the learned CIT(A) has, legally erred in not granting relief on alternate ground that if what was received was not recovery of operating fees accrued, then such non recovery is deductible as bad debt or as business loss.*

9. *On the facts and in the circumstances of the case, the learned*

CIT(A) has legally erred in confirming an addition u/s 68 of the Act, of USD 0.25 million (equivalent to Rs 91,28,417) received by the appellant for and on behalf of Taj International HongKong Ltd. as an unexplained cash credit.

10. *On the facts and in the circumstances of the case, the learned CIT(A) has legally erred in not giving specific directions to grant due consequential deduction under Chapter VIA of the Act.*

11. *On the facts and in the circumstances of the case the learned CIT(A) has legally erred in not granting relief due as per law in the computation of interest u/s 234B of the Act.*

12. *Each ground is independent of the other."*

3. When the appeal was taken up for hearing the Learned Senior Counsel appearing on behalf of the Assessee pressed into service Ground No.1 and 4 raised by the Assessee. It was submitted that the reason recorded by the Assessing Officer were not in compliance with the First Proviso to Section 147 of the Act. In the present case assessment was framed on the Assessee under Section 143(3) of the Act. Thereafter, the reassessment proceedings were again initiated under Section 147 of the Act for the Assessment Year 1998-1999 after the expiry of 4 years from the end of the relevant assessment year. The Assessing Officer was under obligation to give a categorical finding or averment in the reasons recorded for reopening the assessment that income had escaped assessment on account of failure of Assessee to disclose fully and truly all material facts necessary for framing assessment. Since the reasons recorded failed to do so, the reasons recorded were bad in law and therefore, liable to be quashed. Further, the notices/report on the basis of which re-assessment proceedings were initiated were already with the Assessing Officer prior to the completion of re-assessment proceedings under Section 143(3) read with Section 147 of the Act on 25/03/2004 and therefore, there was no new tangible material to initiate reassessment proceedings.

4. Per contra the Learned Departmental Representative placed reliance upon reasons recorded as reproduced in Paragraph 1 of the Assessment Order and submitted that the reassessment proceedings were initiated on the basis of the report received from Enforcement Directorate. The Assessing Officer has sufficient tangible material to initiate the reassessment proceedings and that the Assessee had failed to disclose the facts forming part of report of Enforcement Directorate which were necessary for framing the assessment on the Assessee. Reliance was also placed on report, dated 08/10/2024, received from the Assessing Officer.

5. We have considered the rival submissions advanced by both the sides, perused the material on record (including the report dated, 08/10/2024, received from the Assessing Officer) and have examined the position in law in view of the submissions advanced.

5.1. The facts relevant for adjudication of the Ground No. 1 and 4 raised by the Assessee, as emerging from the record are that in paragraph 1 of the order impugned, the CIT(A) has recorded that assessment was framed on the Assessee for the Assessment Year 1997-1998 under Section 143(3) of the Act on 09/03/2001 at income of INR.105,85,36,899/-. Thereafter, reassessment proceedings were initiated in the case of the Assessee which culminated into passing of the Assessment Order, dated 25/03/2004, under Section 143(3) read with Section 147 of the Act whereby the total income of the Assessee was assessed at INR.107,74,26,414/-. Subsequently, on the basis of report received from Enforcement Directorate reassessment proceedings under Section 147 of the Act were initiated by issuance of notice under Section 148 of the Act on 28/02/2005. The aforesaid reassessment proceedings culminated into passing of the Assessment Order, dated 31/03/2006, under Section 143(3) read with Section 147 of the Act whereby an addition of INR.8,22,25,142/- was made under Section 68 of the Act. In

appeal preferred against the aforesaid Assessment Order, the Assessee, has raised additional ground challenging the validity of the re-assessment proceedings which was rejected and the CIT(A) proceeded to confirm the above addition made by the Assessing Officer under Section 68 of the Act on merits. Thus, being aggrieved the Assessee has preferred the present appeal before this Tribunal.

5.2. Vide Ground No. 4 raised in the present appeal, the Assessee has challenged the validity of the reassessment proceedings. The case set up by the Assessee is that the reasons recorded for reopening the assessment were bad in law. We note that in the case of **Hindustan Lever Ltd. vs. R.B. Badkar 268 ITR 332 (Bom),** cited by the Learned Senior Counsel appearing on behalf of the Assessee, the Hon'ble Bombay High Court has, while examining re-opening assessment in a case where assessment was previously framed under Section 143(3) of the Act, held as under:

> *"20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of*

mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of proviso to section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside." (Emphasis Supplied)

6. Keeping in view the above judgment of the Hon'ble Bombay High Court, we proceed to examine the reasons recorded for reopening assessment as reproduced by the Assessing Officer in Paragraph 1 of the Assessment Order which reads as under:

"Subsequently, on the basis of report received from the Enforcement Directorate, the assessment was reopened by issuing notice under section 148 of the Act on 28.2.2005 on the following grounds:-

"As per the show cause notice No. T-4/45-B/SDE(AB/2001) SCN-V, the assessee company has allegedly violated the

provisions of section 8(1) and sec. 48 of the FERA, 1973. The charge as made out in the SCN is as under:-

> *Furnishing copies of foreign inward remittances of US $ 1.75 million minus bank charges on 21.6.1997 and Rs. 1.05 cr on 20.4.1998 as the balance fees receivable against management and operation of al Gubra Guest House wherein investigation revealed that US S 1.75 million was remitted by Taj International Hotels Ltd. Muscat and not by Al Gubra Guest House"*

From the assessment records of the assessee company, it is observed that the above remittance is not reflected in the details filed. The nature of the remittance and its treatment in the books of account has not been clearly spelt out. It is apparent from the assessment records of AY 1998-99 that the assesse has not included the foreign inward remittance of US $ 1.75 million (ie, approx. Rs. 7 crore at an average conversion of Rs. 40/- per US $).

As per the show cause notice No. T-4/45-B/SDE (AKB/2001) SCN-VIII, the assessee company has allegedly violated the provisions of section 10(1B) and sec. 48 of the FERA, 1973. The charge as made out in the SCN is as under:-

> *"Unauthorised payment of US $ 1 million to account of Dencar Overseas SA from xx xx Guest House without permission of RBI. Transfer to one xx xx Muscat non-recovery of US $ 5,00,000 and unauthorized assignation of recovery of balance to Taj HK all without permission of RBI."*

Further, it is stated that an amount of US $ 1 million was admittedly transferred on 2.10.1993 to Dencar Overseas SA on account of Taj HK. The payee was Mr. xx xx (formerly Chairman of Gulf Air). The nature of transaction for which this payment was made is not known. Facts brought out in the show cause notice show that through a letter dated 23.9.1996, Mr. xx xx was eventually requested to return the amount on the plea that the transaction has not taken place.

The amount to be returned was scaled down to US $ 5,00,000 which was received in installments of US $ 2,50,000 each in November 1996 and September 1997 (11.9.1997).

Facts brought out in the show cause notice show that a special

audit, authorized by The Indian Hotels Co. Ltd, was also carried out. The special audit resulted in an audit report dated 9.2.1998 which is available with the show cause notice of the Enforcement Directorate. The report clearly points out that there is no direct link between the identity of Shri xx xx and the remittance in question.

From the records of The Indian Hotels Co. Ltd., it is seen that the said remittances does not figure anywhere. It is apparent from the assessment records of AY 1998-99 that the assessee has not specifically clarified the source of US $ 2,50,000 (approx. Rs. 1 crore) received on 11.9.1997 which attracts the provisions of section 68 of the Income Tax Act, 1961.

In view of the above referred two issues, I have thus reason to believe that the income of US $ 2 million (approx. Rs. 8 crore) has ***escaped assessment within the meaning of clause (b) of Expln. 2 to section 147 of the Income Tax Act, 1961,*** *and it is a fit case for reopening for assessment u/s. 147." (Emphasis Supplied)*

7. We note that in the reasons recorded there is no categorical averment that the was a failure on the part of the Assessee to disclosed fully and truly all material facts necessary for framing the assessment for the Assessment Year 1998-1999. Further, we note that after recording the relevant facts, the Assessing Officer has, in the last paragraph, recorded its satisfaction that it is a fit case for reopening the assessment. The Assessing Officer has placed reliance upon Clause (b) of Explanation 2 to Section 147 of the Act to form a belief that income has escaped assessment. Section 147 of the Act as applicable to Assessment Year 1998-1999 was introduced by way of substitution by the Direct Tax Laws (Amendment) Act, 1987 [w.e.f. 01/04/1989] and read as under:

"Section 147. : If the Assessing Officer for reason to be recorded by him in writing is of the opinion that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153 assess or reassess such income and also any other income chargeable to tax which has escaped assessment for which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the

depreciation allowance or any other allowance as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year.)

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return *under section 139 or in response to a notice issued under sub section (1) of section 141 or section 148* ***or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.***

Explanation 1-Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have leer discovered by the Assessing Officer will not necessarily are within the meaning of the foregoing proviso.

Explanation 2-For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely-

(a). where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b). ***where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return***

(c). where an assessment has been made, but-

(i) income chargeable to tax has been underassessed; or
(ii) such income has been assessed at too low a rate; or
(iii) such income has been made the subject of excessive relief under this Act; or
(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.]"

(Emphasis Supplied)

8. A perusal of the Explanation 2 to Section 147 of the Act shows that, Clause (b) of the aforesaid Explanation 2 creates a deeming fiction that income chargeable to tax has escaped assessment in a case where return of income has been furnished and no assessment has been framed. Thus, the belief formed by the Assessing Officer for reopening the assessment for the Assessment Year 1998-1999 was that the income charitable to tax had escaped assessment since no assessment was framed on the Assessee. Thus, it is clear that the Assessing Officer had proceeded to initiate reassessment proceedings on the incorrect understanding of the fact that no assessment was framed upon the Assessee. We note that in the First Line of Paragraph 1 the Assessing Officer has categorically recorded that the original assessment was completed in the case of Assessee under Section 143(3) of the Act on 09/03/2001 determining total income of Assessee at INR.105,85,36,899/-. Further, the CIT(A) has recorded that subsequently, reassessment proceedings were initiated in the case of the Assessee on 25/03/2004 determining the total income at INR.107,74,26,414/-. Thus, from the aforesaid it is clear that the very basis of which the Assessing Officer formed the belief that the income liable to tax is escaped assessment was based upon incorrect understanding of the facts and is, therefore, not sustainable in the eyes of law. The reassessment proceedings initiated do not meet the requirements of Section 147 of the Act read with First Proviso thereto. In view of the above, the notice, dated 28/02/2005, issued under Section 148 of the Act, the reassessment proceedings and the Assessment Order, dated 30/03/2006, passed under Section 143(3) read with Section 147 of the Act are not sustainable in law and are, therefore, quashed. Accordingly, Ground No.1 and 4 raised by the Assessee is allowed while all the other grounds raised by the Assessee are dismissed as having being rendered infructuous.

9. In terms of above, the present appeal preferred by the Assessee is allowed.

Order pronounced on 27.03.2025.

Sd/-	*Sd/-*
(Om Prakash Kant)	**(Rahul Chaudhary)**
Accountant Member	**Judicial Member**

मुंबई Mumbai; िदनांक Dated :28.03.2025
Milan,LDC

आदेश की □ितिलिप अU◌ेिषत/Copy of the Order forwarded to :

1. अपीलाथ / The Appellant
2. Ůथ / The Respondent.
3. आयकर आयु4/ The CIT
4. Ůधान आयकर आयु4 / Pr.CIT
5. िवभागीय □ितिनिध ,आयकर अपीलीय अिधकरण ,मुंबई / DR, ITAT, Mumbai
6. गाड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सwा◌िपत □ित //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अिधकरण, मुंबई / ITAT, Mumbai