

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

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 6796/MUM/2010
(Assessment Year : 1999-00)

M/s. American Hotel & Lodging Educational
Institute (earlier known as Educational
Institute of American Hotel & Motel
Association)

Asha House, 28, Suren Road, Andheri (East),
Mumbai 400 093.

PAN: AAAAE0097J

.... Appellant

Vs.

The Asstt. Director of Income-tax-
(International Taxation)-1(1),
1st Floor, Scindia House,
Ballard Pier, N.M.Road,
Mumbai 400 038.

.... Respondent

Appellant by : Shri J.D.Mistry
Respondent by : Shri A.Ramachandran

Date of hearing : 24/11/2015
Date of pronouncement : 24/11/2015

ORDER

PER N.K.BILLAIYA,AM:

This is an appeal filed by the assessee challenging the order of the CIT(A)-10, Mumbai dated 19/07/2010 pertaining to Assessment Year 1999-2000. The grievance of the assessee is twofold. Firstly, the assessee has challenged the assessment as barred by limitation within

the provisions of section 153(2A) of the Income Tax Act,1961(in short 'the Act') and secondly, the assessee is aggrieved by the denial of exemption under section 10(23C)(vi) of the Act. Therefore, let us understand the factual matrix of the case.

2. In this case, in the first round the litigation travelled upto the Tribunal and the Tribunal vide an order dated 21/02/2005 in ITA No.2365/Mum/2003 restored the matter to Assessing Officer to examine all the aspects afresh and follow the decision of the Hon'ble Delhi High Court in the Writ Petition of the assessee as and when the same is decided. Pursuant to the directions of the ITAT the order giving effect was made vide an order dated 09/01/2008. It is the contention of the assessee that this order is barred by limitation within the provisions of section 153(2A) of the Act.

2.1 Provisions of section 153(2A) read as under:-

Section 153 (2A) " Notwithstanding anything contained in sub-sections 4(1), (1A), (1B) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment in pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner :

Provided that where the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner, on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such an order of fresh assessment may be made at any time up to the 31st day of March, 2002.

Provided further that where the order under section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Commissioner on or after the 1st day of April, 2005, the provisions of this sub-section shall have effect as if for the words "one year", the words "nine months" had been substituted.

Provided also that where the order under section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Commissioner on or after the 1st day of April, 2006, and during the course of the proceedings for the fresh assessment of total income, a reference under sub-section (1) of section 92CA-(i) was made before the 1st day of June, 2007 but an order under sub-section (3) of section 92CA has not been made before such date ; or(ii) is made on or after the 1st day of June, 2007,

Provided also that where the order under section 254 is received by the Chief Commissioner or Commissioner or, as the case may be the order under section 263 or section 264 is passed by the Commissioner on or after the 1st day of April, 2010, and during the course of the proceeding for the fresh assessment of total income, a reference under sub-section (1) of section 92CA is made, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year" the words "two years" had been substituted."

2.2 A perusal of this section shows that an order of fresh assessment setting aside the order cancelling the assessment may be made at any time before the expiry of one year from the end of the financial year in which the order is received by the Commissioner. As mentioned elsewhere, the order of the ITAT is dated 22/02/2005, which was received by the Department on 05/04/2005. Now the end of the financial year in which the order is received by the Commissioner would mean the end of the financial year 2005-06 and one year from the end of financial year would mean 31/3/2007 and the reassessment order is dated 09/01/2008. Thus, it can be seen that the order is barred by limitation. However, a strong objection was raised by the Ld. DR stating that the Tribunal has directed to do the re-assessment after following the decision of the Hon'ble High Court of Delhi in the Writ Petition of the assessee. The said decision was made on 24/11/2006 and was received by the DIT(IT) on 23/02/2007, which means said order of the Hon'ble High Court was communicated in financial year 2006-07 and one year from the end of the said financial year would mean upto 31/03/2008 and since the assessment order is made on

09/01/2008, therefore, it is well within the period of limitation. The relevant provision for this proposition of the Ld. DR is section 153(3) of the Act, which reads as under:-

Section 153(3): " The provisions of sub-sections 4(1), (1A), (1B) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, subject to the provisions of sub-section (2A) be completed at any time--

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260, 262, 263 or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act;

(iii) where in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147."

2.3 A simple perusal of this section shows that it is subject to the provisions of section 153(2A) of the Act. Provisions of section 153(2A) are mentioned elsewhere. In our understanding, the law provisions of section 153(2A) have overriding effect to the provisions of section 153(3) of the Act and, therefore, in our considered opinion the impugned order giving effect to the decision of the ITAT is barred by limitation. The appeal filed by the assessee on this ground is allowed.

3. Since we have held that the order is barred by limitation, we do not find it necessary to go into the merits of the case.

4. In the result, the appeal of the assessee is allowed accordingly.

Order pronounced in the open court at the time of hearing on 24th November 2015.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER
Mumbai, Dated 24/11/2015

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

Vm, Sr. PS

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai