

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
IT Appeals No. 3, 4, 5, 6, 7 and 10 of 2008
Decided on : 30th December, 2009

ITA No. 3 of 2008

Mukesh Malhotra *Versus* **Commissioner of Income Tax**

ITA No.4 of 2008

Rakesh Malhotra *Versus* **Commissioner of Income Tax**

ITA No.5 of 2008

Jai Dev Malhotra *Versus* **Commissioner of Income Tax**

ITA No.6 of 2008

Jai Dev Malhotra *Versus* **Commissioner of Income Tax**

ITA No. 7 of 2008

Mukesh Malhotra *Versus* **Commissioner of Income Tax**

ITA No.10 of 2008

Rakesh Malhotra *Versus* **Commissioner of Income Tax**

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The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?¹

For the Appellants: **Mr. Vijay Vir Singh, Advocate vice counsel, in all appeals.**

For the respondent: **Mr. Naresh Verma, Advocate, vice counsel, in all appeals.**

Surjit Singh, Judge (Oral)

By this judgment, we propose to dispose of six appeals, particulars whereof are given in the heading (of

Whether reporters of the local papers may be allowed to see the judgment?

this judgment), as all of them are directed against the same order, i.e. order dated 25th July, 2007, of Income Tax Appellate Tribunal, Chandigarh Bench, Camp at Shimla and also because all these appeals were admitted on the same substantial question of law, which is as follows:

“Whether the learned Tribunal has misread and misconstrued the material on record in estimating the hotel receipts and whether the findings based without any material are sustainable in law?”

2. Facts relevant for the disposal of all the appeals may be noticed. Appellants, in all the six appeals, are members of a single family. They are running three hotels in the same complex at Shimla. The hotel complex abuts on The Mall Road opposite the Tourism Department Lift. The proprietors of the three hotels are income tax assesseees. They filed income returns for the year 1994-95. In respect of one hotel, return showed income of Rs.2,98,936/- for the year 1994-95. It appears that income tax authorities were not satisfied with the income shown in the return. A search and seizure operation, under Section 132 of the Income Tax Act, 1961, was conducted on 19.10.1994. Unaccounted cash, some valuable articles, incriminating documents and information were found in the course of such search and seizure. Assessment for the year

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1994-95, in view of the seizure made during the search, was completed by the Assessing Officer, under Section 143(3) of the Income Tax Act. Income was assessed at Rs.15,48,357/-, which, *inter alia*, included trading addition of Rs.11,46,703/-, on account of suppression of hotel receipts, under Section 154(2) of the Act.

3. Matter was taken right upto the Income Tax Appellate Tribunal. The Tribunal passed an order dated 30.3.2004 in ITA No.13/Chandi/98 and other connected matters to the following effect:

“The next question that arises for consideration is as to the quantum of additions. The A.O. has worked out the average receipts per day on the basis of rates approved by the Tourism Department at Rs.15,000/-. This has been questioned by the assessee and on the basis of data available to us, the average room rent works out to Rs.10,000/- approximately. It is thus evident that the estimate made by the A.O. is excessive. Since the head of the family, namely Shri B.N. Malhotra has approached the Settlement Commission and settled the dispute about the concealed income, we consider it appropriate to set aside the assessments and remit the same to the file of the A.O. for purposes of determination of additions in the cases of the assesseees in the respective assessment years keeping in view the disclosure made by Shri B.N. Malhotra before the settlement Commission. The decision of the

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settlement Commission shall be kept in mind for making reasonable additions in the cases of the present assesseees the sons of Shri B.N. Malhotra.”

4. After the remand of the case, Assessing Officer worked out the occupancy days at 105 and the daily higher charges @ Rs.10,425/- and thus the total income was assessed at Rs.10,94,625/-, in respect of one of the hotels about which return was filed for the year 1994-95, as aforesaid. Similarly, in other cases also, number of working days were worked out at 105 and daily income was assessed at different rates on the basis of rates approved by the Tourism Department and assessment orders were passed not only in respect of the year 1994-95, but also in respect of the year 1995-96 qua all the three hotels and thus there were six assessment orders.

5. Assesseees felt aggrieved by the fresh orders of the Assessing Officer and filed appeals before the Income Tax Commissioner (Appeals), who vide order dated 22.11.2006, reduced the daily income from occupancy of rooms to half, in respect of all the three hotels for both the assessment years and also scaled down the number of occupancy days to 90 for the year 1994-95 and further reduced it to 75 days for the year 1995-96, on account of outbreak of plague in Gujarat.

6. Assesseees were still not satisfied and they filed appeals before the Tribunal. Department also felt aggrieved by the order of Commissioner (Appeals), by which number of occupancy days were reduced and also tariff was scaled down to half of what had been assessed by the Assessing Officer.

7. Learned Tribunal came to the conclusion that the Assessing Officer had rightly worked out number of occupancy days at 105 and that the tariff worked out by him was based upon the rates approved by the Tourism Department and that at times the hoteliers do not get customers at such rate and, therefore, allowed 20% discount in the approved tariff adopted by the Assessing Officer and directed reassessment of income accordingly.

8. We have gone through the record. The Advocates, who are appearing vice counsel for the original counsel, have assisted us in reading the impugned orders of the Tribunal and other documents.

9. There is absolutely nothing on record, indicating that the Tribunal has misread or misconstrued any material document or other evidence, relied upon by the parties. From the perusal of the orders of the Assessing Officer as also the order of the Tribunal, it is clear that the Assessing Officer has fairly taken into account, while working out the occupancy days, that peak season in Shimla is only during

summer months of May, June and July. He has given sufficient discount for lean period of remaining nine months. Out of total 365 days of a year, only 105 days have been taken to be occupancy days. This has been done by taking into account the peak seasons and lean seasons and, therefore, it does not lie in the mouth of the assessees to say that occupancy days have been worked out without there being any material or basis.

10. Assessing Officer also took into account the occupancy, in terms of number of days, shown by other hoteliers in Shimla Town and in none of those hotels occupancy was less than 105 days, except in case of one hotel. In all other hotels, occupancy was much higher. Hotel complex of the assessees, being on The Mall and in the heart of the town, its occupancy is supposed to be much higher than other hotels with which comparison has been done by the Assessing Officer.

11. As regards the hire charges, the rates approved by the Tourism Department of the State were taken into consideration by the Assessing Officer. Therefore, it cannot be said that he assessed the rates without there being any material on record. The Tribunal has reduced these rates by 20%. Assessees had submitted returns, which were found incorrect. Their books of account were found to be fudged and were, therefore, excluded from consideration.

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They had not issued proper receipts to the customers. This they did with a view to showing that the occupancy was for lesser number of days and hire charges were lower.

12. In view of the above discussion, we are of the considered view that the substantial question of law, on which the appeals were admitted, in fact, does not arise. Consequently, all the appeals are dismissed.

(Surjit Singh), J

December 30, 2009 (ss)

(Surinder Singh), J.