



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

D.B. Income Tax Appeal No. 162/2008

CNR: RJHC010449382008 | URN: ITA / 262U / 2008

M/s Hilltop Palace Hotel Pvt. Ltd. Through its Director Shri
Rajeev Khurana, aged 46 years, c/o 5-Ambavgarh, Udaipur
(Raj.)

-----Appellant

Versus

Assistant Commissioner of Income Tax, Circle-1, Udaipur (Raj.).

-----Respondent

Connected With

D.B. Income Tax Appeal No. 157/2008

CNR: RJHC010299892008 | URN: ITA / 246U / 2008

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Rajeev Khurana, aged 46 years, c/o 5-Ambavgarh, Udaipur
(Raj.)

-----Appellant

Versus

Assistant Commissioner of Income Tax, Circle-1, Udaipur (Raj.).

-----Respondent

For Appellant(s)	:	Mr. Priyansh Arora
For Respondent(s)	:	Mr. K.K. Bissa

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT**

Order(Oral)

13/10/2026

Reportable

Per: Arun Monga, J.

1. The appellant is before this Court seeking the following
reliefs:-

“(i) Allow the instant appeal and quash and set aside the impugned
order of the learned ITAT dated 31.08.2007 and the orders dated
28.03.2003 and 12.09.2002 passed by the learned CIT (A) and orders
dated 26.12.2002 and 27.03.2002 passed by the learned Assessing Officer



to the extent of the disallowance of the interest income for deduction under Section 80HHD.

(ii) Decide the aforesaid questions of law in favour of appellant and against the Revenue;

(iii) Reframe the suitable questions of law if it is considered necessary to do justice to the appellant;”

2. The aforesaid two appeals involve common questions of law and facts and are being disposed of by the instant order. For the sake of brevity, recitals are being taken from D.B. Income Tax Appeal No. 162/2008.

3. Briefly stated, the appellant is an Indian company engaged in the hotel business at Udaipur and approved by the prescribed authority for the purposes of Section 80HHD of the Income-tax Act, 1961 (hereinafter referred to as 'the Act of 1961'). The appellant received foreign exchange for services rendered to foreign tourists and claimed deduction under Section 80HHD of the Act of 1961 for the assessment year 1995-96. Its return was initially processed under Section 143(1), followed by a scrutiny assessment under Section 143(3) dated 27.03.2001. Subsequently, notice dated 19.03.2002 was issued under Section 148 of the Act of 1961, pursuant to which the Assessing Officer passed the reassessment order dated 26.12.2002, disallowing the appellant's claim for deduction under Section 80HHD of the Act of 1961 in respect of interest income of Rs. 12,16,465/-, on the ground that the interest earned on advances and deposits did not constitute income from its business.

3.1. Aggrieved by the assessment order, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals), which upheld the disallowance vide order dated 28.03.2003. The appellant thereafter approached the Income Tax Appellate Tribunal



(ITAT), which, vide order dated 31.08.2007, affirmed the findings of the CIT (Appeals), relying upon the judgment of the Delhi High Court in CIT v. Shri Ram Honda Power Equipments & Ors. The Tribunal observed that the provisions of Sections 80HHC and 80HHD were substantially similar and held that interest earned on surplus funds deposited with banks was assessable as income from other sources and not as profits and gains of business or profession. The present appeal assails the order of the ITAT to the extent of the disallowance of deduction under Section 80HHD of the Act of 1961 in respect of the aforesaid interest income, and no other issue is under challenge.

3.2. The appellant contends that the ITAT erred in applying the interpretation of Section 80HHC to Section 80HHD of the Act of 1961 without appreciating the material differences between the two provisions. It is submitted that Section 80HHD(3) of the Act of 1961 requires the profits of the entire business, as computed under the head "Profits and Gains of Business or Profession", to be ascertained and apportioned in the prescribed proportion based on receipts from services rendered to foreign tourists vis-à-vis the total receipts of the business. Unlike Section 80HHC, which was amended with effect from the assessment year 1992-93 to exclude specified receipts, including interest, while computing business profits, no corresponding amendment was made to Section 80HHD for that purpose. According to the appellant, the legislative scheme under Section 80HHD does not permit the exclusion of interest income from the business profits merely because it was earned on deposits of surplus funds. It is further contended that, once the interest income was assessed under the



head "Profits and Gains of Business or Profession", the same could not be excluded while computing the deduction under Section 80HHD(3). The appellant also maintains that the reserve required to be maintained under Section 80HHD necessitated the retention of liquid funds, and investment of such funds to earn interest was incidental to the furtherance of its business.

3.3. On the aforesaid grounds, the appellant submits that the findings of the Assessing Officer, the CIT (Appeals) and the ITAT, insofar as they deny deduction under Section 80HHD in respect of the interest income, are contrary to the statutory scheme and liable to be set aside. The substantial questions of law raised in the appeal concern the classification of interest earned on surplus bank deposits for the purposes of Section 80HHD, the applicability of the judgment in CIT v. Shri Ram Honda Power Equipments & Ors., the distinction between Sections 80HHC and 80HHD in computing business profits, and the permissibility of excluding such interest income from the profits of the business for the purposes of deduction under Section 80HHD(3).

4. *Per contra*, learned counsel appearing for the Revenue opposes both the appeals contending that the impugned orders passed by the ITAT as well as the CIT appeals do not warrant any interference, as the same are based on cogent appreciation of the material placed on record as well as the peculiar facts of the case.

5. Mr. K.K. Bissa, learned counsel for the Revenue would draw our attention to para No.9 of the order passed by the ITAT in particular, and emphasize that the reliance placed in turn on a judgment rendered by Delhi High Court is the correct view taken



and thus, the appeals be dismissed. For ready reference para 9 of the impugned order passed by learned ITAT is reproduced hereinunder:-

*“We have heard the rival submissions and perused the relevant material on record. First of all, we shall decide the nature of interest received by the assessee. It is not disputed that the interest was earned from the FDRs made by it in various banks. The ld. A.R. has contended that interest income be assessed under the head business income on the ground that it was statutorily required to keep funds under reserve for purposes to be utilized as enumerated in clause (4) of sec. 80HHD. We have perused the language of the said sub-Section from which it is apparent that the purposes for which such reserve is to be utilized have been given in this Section. It has not been provided in this sub-Section that the amount must be parked in the bank deposits. The condition precedent is that the amount credited to the reserve has to be utilized by the assessee before the expiry of the period of five years next following the previous year in which the amount is credited for specified purposes. The amount may be utilized at any time within five years and it is nowhere stipulated that the retention of the amount in the FDRs is must. It, therefore, follows that interest income was earned by the assessee by way of deposit of surplus funds in the FDRs. **The Hon'ble Delhi High Court in a recent decision in the case of Shreeram Honda [2007] 207 CTR [Del] 689** has held in the context of deduction u/s 80HHC, the language of which is almost similar to sec. 80HHD, that where the surplus funds are parked with the bank and interest is earned therefrom, it can be categorized under the head income, from other sources and not as profits and gains from business or profession. In our considered opinion, the ld. CIT(A) rightly appreciated the facts in endorsing the opinion of the Assessing Officer that such interest income can be grouped under the head income from other sources and not profits and gains of business or profession. We, therefore, uphold the finding of the ld. CIT(A) in as much as he has allowed deduction on the net interest income and the Revenue is not aggrieved against such finding. This ground is partly allowed.”*

6. Having heard the rival contentions and upon perusal of the case file and the impugned orders, we are of the considered view that no interference is warranted. Let us see how. Our reasons to follow in the succeeding part.

7. First and foremost, it would be apposite to reproduce the questions of law which were framed at the time of admitting the appeals vide order dated 15.4.2009 passed by the Co-ordinate Bench of this Court, which reads as under.

“(i) Whether the learned ITAT as also the lower authorities have erred in properly interpreting Section 80HHD(3) which specifically provides that the profits of the entire business are to be ascertained and the said sub-Section does not provide for the bifurcation of the income once the income has been assessed as income under the head "Profit and Gains from Business or Profession" when the said income is earned on the deposits made out of the reserves created out of the business income more so when the said reserves are required to be statutorily created?





(ii) Whether the learned ITAT was correct in disallowing the interest income earned by deposit of funds statutorily set aside as reserve out of business income, for deduction under Section 80HHD when the law does not provide for the exclusion of the said income from the Profits and Gains from Business for the purpose of computation of qualifying amount as specified in Section 80HDD (3)?”

8. Before we address the aforesaid questions of law, it would be appropriate to refer to the following relevant portions of the impugned order passed by the learned Tribunal, so as to appreciate the considerations that weighed with it in upholding the order dated 28.03.2003 passed by the Commissioner of Income Tax (Appeals).

“7. Ground No. 2 is against the action of the A.O. of including the sales-tax of Rs. 745060/- in the total turnover of the appellant's business for the purpose of computing the deduction us. 80HHD. This issue has already been discussed while discussing ground no.1. It has been held that the A.O. was justified in including the sales-tax amount in the total turnover of the business of the appellant for the purpose of computing the deduction us 80HHD. The ground is, therefore, rejected.

8. Ground No. 3 is against the action of the A.O. in rejecting the method of accounting followed by the appellant in respect of lease rental income and in including the income of Rs.10,15,092/- on accrual basis resulting in addition of Rs.8,45,910/-. The A.O. has noted in the asstt. order that the appellant had leased out "Effluent Treatment Plant" to Ms. Rinku Pojchem Ltd. Mumbai, at a lease rent of Rs. 84,591/- per month or Rs.10,15,092/- per annum, for a period of 3 years. The A.O. has noted that the said lease income was included by the appellant in the total income declared for A.Yrs, 1996-97 and 1997-98 but during the period under consideration the appellant has shown lease rental income of Rs. 1,69,182/- for 2 months only due to non-payment of the lease rent by the lessee. The A.O. however, included the full rent of Rs. 10,15,092/- in the total income of the appellant on mercantile basis, leading to an addition of Rs. 8,45,910/- on this ground. During the appeal hearing the ld counsel for the appellant did not press this ground. Otherwise also find that the A.O. has given substantive justification in para 6.1 to 6.8 for including the leasing income of Rs. 8,45,910/-. The action of the A.O., is therefore, upheld and this ground is treated as rejected.

9. Ground No. 4 is against charging of interest u/s. 234A, 234B, 234C and 220(2). The appellant has also objected to the penalty initiated u/s. 271(1)(c). The charging of interest under the above Sections is only consequential and does not require any separate adjudication. There is no provision for filing appeal against mere initiation of penalty proceedings. This ground is, therefore, rejected.

**Order dated 12.09.2002 as impugned under D.B. ITA 157/2008
TITLE M/S Hilltop Palace Hotel Pvt. Ltd. V/S A.C.I.T. Circle- 1,
Udaipur.**

7. The contentions raised have been considered. The provisions regarding assessment of income which has escaped assessment in terms of sec. 147. have been amended w.e.f. 01.04.1989. in accordance with the new scheme of assessment introduced wef that date. As per the new scheme, there will not be not be any application of mind by the A.O. in majority of the cases unless the case is picked up for scrutiny and a regular assessment order is passed us. 143(3). The Amending Act, 1987 has, therefore, rationalised the





provisions of sec. 147 and other connected Sections to simplify the procedure for bringing to tax income which escapes assessment, specially in non scrutiny cases. The requirement of failure on the part of the appellant to file a return of income or to disclose fully and truly all material facts and the requirement of information in possession of the A.O., which were in existence under the old provisions, have been done away with. Under the new provisions, the only requirement is that the A.O. should have reason to believe that income has escaped assessment. An exception to this general provision has been made in the proviso to sec. 147 to the effect that if an order u/s. 143(3) or 148 has been passed, no action can be taken after expiry of 4 years unless there is failure on the part of the assessee to file return of income u/s. 139 or to disclose fully and truly all material facts. Consequently, if in a case, no order u/s. 143(3) has been passed in the first place, the proviso will not come into operation and the requirement for reopening would be only that the A.O. should have reason to believe that income has escaped assessment. As pointed out above, in the appellant's case no order u/s. 143(3) was passed before issue of notice u/s. 148. Although an intimation u/s. 143(1)(a) was issued but the same cannot be treated as a regular assessment u/s. 143(3). Consequently in the case of the appellant company for the asstt. year under consideration, the proviso to sec. 147 will not apply and the A.O. was free to take action u/s. 147/148 on the simple ground that he has reason to believe that income chargeable to tax has escaped assessment. In the appellant's case the A.O. was of the belief that the interest of Rs. 9,58,884/-, earned on fixed deposit, was not includible in the business income and, therefore, should not have been considered while computing the deduction u/s. 80HHD and 801. In view of these facts and circumstances the A.O. was justified in taking action u/s. 147/148. Since no asstt. u/s. 143(3) was completed earlier, the decisions relied upon by the ld. counsel (247/436) and (252/802) and the decisions of the ITAT will not apply.

8. The ld. counsels have also contended that while issuing the intimation u/s. 143(1)(a) the A.O. was aware of the details of the claim as the same had already been considered u/s. 143(1)(a) in asstt. year 1994-95 and u/s. 143(3) for A.Y. 1996-97 and consequently having accepted the claim u/s. 143(1)(a), the A.O. was not entitled to reopen the assessment u/s. 148. The contentions raised are not acceptable. It is well settled that the principle of resjudicata or estoppel by record. have no application in Income-tax proceedings so as to preclude the determination of a question in a previous assessment order from being reopened in the proceedings relating to a subsequent assti. year. Therefore, a decision given in an assessment for an asstt. year, is not binding in any other assi, year.

Consequently, while dealing with the issue of reopening of the assessment for the asstt. year under consideration, only the facts and circumstances as available on record for this particular asstt. year have to be considered and reference to the proceedings in any other asstt. year cannot be made for holding that the A.O. was aware of the complete facts and details and, therefore, the action w/s. 148 was due to change of opinion.

9. In view of the above discussion the action of the A.O. in initiating proceedings u/s. 147/148 is upheld and this ground is rejected.

9. In the context of the aforesaid view taken by the learned ITAT, the relevant tax governing provision which prevailed at the time the impugned order was passed i.e. Section 80HHD of the Act of 1961 may be seen, which reads as under:

“Section 80HHD:- Deduction in respect of earnings in convertible foreign exchange.

(1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of a hotel or of a tour





operator; approved by the prescribed authority in this behalf or of a travel agent, there shall, in accordance with and subject to the provisions of this Section, be allowed, in computing the total income of the assessee, a deduction of a sum equal to the aggregate of-

(a) for an assessment year beginning on the 1st day of April, 2001, a deduction of a sum equal to the aggregate of-

(i) forty per cent. of the profits derived by him from services provided to foreign tourists; and

(ii) so much of the amount not exceeding forty per cent. of the profits referred to in sub-clause (i) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-Section (4);

(b) or an assessment year beginning on the 1st day of April, 2002, a deduction of a sum equal to the aggregate of-

(i) thirty per cent. of the profits derived by him from services provided to foreign tourists; and

(ii) so much of the amount not exceeding thirty per cent. of the profits referred to in sub-clause (i) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-Section (4);

x-x-x-x-x

(4) The amount credited to the reserve account under clause (b) of sub-Section (1), shall be utilised by the assessee before the expiry of a period of five years next following the previous year in which the amount was credited for the following purposes, namely:-

(a) construction of new hotels approved by the prescribed authority in this behalf or expansion of facilities in existing hotels already so approved;

(b) purchase of new cars and new coaches by tour operators already so approved or by travel agents;

(c) purchase of sports' equipment for mountaineering, trekking, golf, river-rafting and other sports in or on water;

(d) construction of conference or convention centres;

(e) provision of such new facilities for the growth of Indian tourism as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(f) subscription to equity shares forming part of any eligible issue of capital made by a public company:

Provided that where any of the activities referred to in [clauses (a) to (f)] [Substituted by Act 27 of 1999, Section 47, for " clauses (a) to (e)" (w.e.f. 1.4.2000).][would result in creation of any asset owned by the assessee outside India, such asset should be created only after obtaining prior approval of the prescribed authority."

10. Perusal of the aforesaid Section leaves no manner of doubt that what is stipulated therein is simple retention of amounts by way of which are imperative to conduct the business operations of an entity, and not the funds which are found to be surplus and are voluntarily put in the fixed deposits. In this context, we





respectfully agree with the view taken by Delhi High Court, which has been rightly relied upon by the learned ITAT while passing the order.

11. Though, of course, the view of Delhi High Court was on the basis of *pari materia* provision contained under Section 80HHC and it is not in dispute that 80HHD is almost similar to the provision which was interpreted by Delhi High Court.

12. Factually, it is not in dispute that the appellants had indeed put surplus funds voluntarily in the fixed deposits which remained parked without being utilized for business purposes for running the hotel.

13. Accordingly, we see no reason why the same be not treated as an income from other sources, and it is accordingly so held, since we are of the same view as already taken by the ITAT.

14. The reliance placed by learned counsel for the appellant on the judgment rendered by this High Court at Jaipur Bench in M/s Choudhary and Brothers vs. Deputy Commissioner of Income Tax¹ and judgment rendered by the High Court of Bombay in Gateway Terminals India Pvt. Ltd. vs. Deputy Commissioner & Anr.². These are not applicable to the present case, since both the cases relied upon by him were of a business entity, where the fixed deposits had to be made imperatively in order to conduct the business operation. Present in the case, which is otherwise, as already held

1. D.B. Income Tax Appeal No.355/2017, decided on 31.08.2018.

2. I.T.a. No.1139/2021, decided on 26.08.2025.





by us and therefore, no parity can be accorded to the appellant herein.

15. Accordingly, the questions framed as above are answered against the appellant and in favour of the revenue. No other question of law is either involved or canvassed in course of the arguments.

16. Accordingly, the appeal is dismissed. All pending application(s) also stand disposed of.

(YOGENDRA KUMAR PUROHIT),J

(ARUN MONGA),J

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