

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

BENCH AT JAIPUR

S.B.SALES TAX REVISION NO. 117 / 2014

ASSISTANT COMMISSIONER

-----Petitioner

Versus

M/S RAJMAHAL PALACE HOTELS

-----Respondent



Connected With

1. S.B.SALES TAX REVISION / REFERENCE No. 26 / 2010
CTO, COMMERCIAL TAXES DEPARTMENT, CIRCLE-B, JAIPUR

V.

M/S. RAJMAHAL PALACE HOTELS, JAMNALAL BAJAJ MARG,
JAIPUR

2. S.B.SALES TAX REVISION / REFERENCE No. 34 / 2010
CTO, COMMERCIAL TAXES DEPARTMENT, CIRCLE-B, JAIPUR

V.

M/S. RAJMAHAL PALACE HOTELS, JAMNALAL BAJAJ MARG,
JAIPUR

3. S.B.SALES TAX REVISION / REFERENCE No. 40 / 2010
CTO, COMMERCIAL TAXES DEPARTMENT, CIRCLE-B, JAIPUR

V.

M/S. RAJMAHAL PALACE HOTELS, JAMNALAL BAJAJ MARG,
JAIPUR

4. S.B.SALES TAX REVISION / REFERENCE No. 42 / 2010
CTO, COMMERCIAL TAXES DEPARTMENT, CIRCLE-B, JAIPUR

V.

M/S. RAJMAHAL PALACE HOTELS, JAMNALAL BAJAJ MARG,
JAIPUR

5. S.B.SALES TAX REVISION / REFERENCE No. 47 / 2010
CTO, COMMERCIAL TAXES DEPARTMENT, CIRCLE-B, JAIPUR

V.

M/S. RAJMAHAL PALACE HOTELS, JAMNALAL BAJAJ MARG,
JAIPUR

6. S.B.SALES TAX REVISION / REFERENCE No. 118 / 2014
CTO, COMMERCIAL TAXES DEPARTMENT, CIRCLE-B, JAIPUR

V.

M/S. RAJMAHAL PALACE HOTELS, JAMNALAL BAJAJ MARG,
JAIPUR

7. S.B.SALES TAX REVISION / REFERENCE No. 119 / 2014

CTO, COMMERCIAL TAXES DEPARTMENT, CIRCLE-B, JAIPUR

V.

M/S. RAJMAHAL PALACE HOTELS, JAMNALAL BAJAJ MARG,
JAIPUR

8. S.B.SALES TAX REVISION / REFERENCE No. 120 / 2014

CTO, COMMERCIAL TAXES DEPARTMENT, CIRCLE-B, JAIPUR

V.

M/S. RAJMAHAL PALACE HOTELS, JAMNALAL BAJAJ MARG,
JAIPUR

9. S.B.SALES TAX REVISION / REFERENCE No. 121 / 2014

CTO, COMMERCIAL TAXES DEPARTMENT, CIRCLE-B, JAIPUR

V.

M/S. RAJMAHAL PALACE HOTELS, JAMNALAL BAJAJ MARG,
JAIPUR



Order reserved on : 25th November 2016

Order pronounced on : 13th January 2017

For Petitioners : Mr. R.B. Mathur with
Ms. Tanvi Sahai and
Ms. Meenal Ghiya

For Respondents Mr. K.K. Sharma, Sr. Counsel,
with
Mr. Rishabh Khandelwal
Mr. Sarvesh Jain

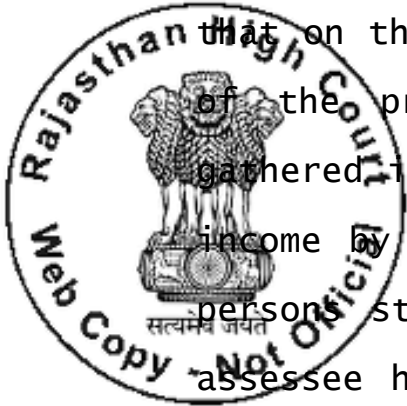
HON'BLE MR. JUSTICE JAINENDRA KUMAR RANKA

Judgment

1. All these petitions at the instance of the Revenue are directed against common order dt 5.10.2009 passed by the Rajasthan Tax Board, Ajmer, whereby appeals of the respondent has been allowed. It relates to assessment years 2002-03 to 2006-07 and is under the Rajasthan Tax on Luxuries (Hotel & Lodging Houses) Act, 1990.

2. The brief facts noticed are that the respondent is a luxury hotel and as per the provisions

of the Act, was subjected to levy of luxury tax. It is prescribed under the Act that if the tariff is more than Rs.1000/- per day, luxury tax @ 8% was leviable, however, if the tariff exceeded Rs.3000/- per day, the tax is chargeable @ 10%. It is the claim of Revenue



that on the basis of a survey conducted and on perusal of the profit and loss account and other details gathered it was noticed that the assessee is receiving income by way of rental of the rooms occupied by the persons staying in hotel and in addition to that the assessee had also received certain amounts during the assessment years on account of renting/leasing out of "lawn" for the purposes of marriage parties and for other occasions. It was found by the Assessing Officer that there was an under assessment as the assessee had not disclosed luxury tax payable on the renting of "lawn". A notice was said to have been issued to the respondent assessee and it is observed by the AO that the assessee was granted an opportunity by a show cause notice and though notice was duly served on the respondent assessee but none appeared on the given date and accordingly taking into consideration the material available on record and perusal by the AO of the profit and loss account, levied tax @ 8% on the rent realised on "lawn". Thus, framed an assessment u/s 17(10), 21(5) and 20 of the Act by not only levying tax but interest as well as levied penalty.

3. The assessee preferred appeals before the Dy. Commissioner (Appeals) before whom the assessee contended that no tax is leviable for renting of the

lawn because the lawn is separate, it has separate access and merely because there is one profit and loss account or a separate receipt has been issued of renting of the lawn, there is no reason to levy luxury tax when renting of lawn is not a luxury taking into consideration the definition under the Act. It was also pleaded before the DC(A) that the reassessment was not proper and all material was available with the AO at the time of original assessment framed and no fresh material came to the knowledge of the AO. However, the DC(A) taking into consideration the material placed on record answered in favour of the Revenue and upheld the interest as well as penalty. The DC(A) also upheld that there was escapement within the provisions of the Act as fresh material came to the knowledge of the AO and thus upheld the reopening of the assessment.

4. The assessee preferred an appeal before the Tax Board, who by a common order, however, upheld the reopening of the assessment but was satisfied that the renting of lawn and receiving of certain amount, is not applicable in the facts of the case and held that an amendment was brought on 9.3.2007 and the same may be applicable after 9.3.2007 but not prior to 9.3.2007 and all assessments being prior to the cut off date of 9.3.2007 when the amendment was made, is not applicable on the facts of the instant case and accordingly allowed the appeal and reversed the order passed by the AO as well as DC(A).

5. Learned counsel for the petitioner-Revenue vehemently contended that the AO was well justified in



reopening of the assessment and both the appellate authorities have upheld the reopening of the assessment and this finding of the Tax Board as well as DC(A), has become final. The learned counsel contended that the Tax Board was unjustified in holding that there was



was difference before 9.3.2007 and after 9.3.2007 and drew attention of the court analysing both the provisions prior and later and contended that even prior to 9.3.2007 the definitions of 'business', 'hotel', and 'luxuries provided by the hotel' are quite clear and admittedly the respondent is a luxury hotel.

Learned counsel contended that the definition of "business" is wide enough to cover any other service in connection with or ancillary to such activity of providing residential accommodation by a hotelier for monetary consideration. He contends that hotel includes residential accommodation along with lawns and the definition of 'luxuries' provided in hotel means - accommodation (such as room or other place or lawn etc.), which should cover the renting of the lawn as well. Learned counsel contended that only prospective 9.3.2007 to cover all other open lands which were being let/leased out for the purposes of marriage, functions or otherwise were taken into tax net and did not affect the case of assessee because admittedly it is a luxury hotel, charging more than Rs.1000/- per day and the reasoning reached by the AO as well as the DC(A) is well reasoned and thus supported the order of both the authorities below. Learned counsel also contended that not only interest is leviable but even penalty was just

and proper as the assessee had evaded payment of tax and once there is a finding that there was evasion of tax, then the penalty is certainly to be imposed and learned counsel contended that the levy of tax, interest and penalty were well reasoned and justified.

Learned counsel for the Revenue also relied on following judgments :-

Paul Enterprises & Others v. Rajib Chatterjee & Company and others (2009) 3 SCC 709, **Mukesh K. Tripathi v. Senior Divisional Manager, LIC & Others** (2004) 8 SCC 387, **Bharat Coking Coal Ltd. v. Annapurna Construction** (2008) 6 SCC 732, **Pandey & Co. Builders Pvt. Ltd. v. State of Bihar & Another** (2007) 1 SCC 467, **Commissioner of Income Tax, Gujarat v. Vadilal Lallubhai** AIR 1973 SC 1016, **Raymond Woollen Mills Ltd. v. Income Tax Officer & Others** [1999] 236 ITR 34 (SC), **Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Pvt. Ltd.** [2007] 291 ITR 500 (SC), **Honda Sie1 Power Products Ltd. v. DCIT & Another** (2012) 12 SCC 762, **Rajasthan Felts Manufacturing Co. v. The State of Rajasthan & Others** [1980] 45 STC 274 (Raj).

6. Per contra learned counsel for the respondent raised a preliminary issue that reopening of the assessment was not justified as on the same material which was available on record, the then AO originally assessing, accepted the claim and it is only the incumbent on a change of opinion, issued a notice for reopening, which primarily was illegal. Learned counsel contended that no fresh material came to the notice and merely on account of change of opinion, a



closed assessment cannot be reopened. Learned counsel contended that since assessee succeeded before the Tax Board on merits, therefore, there was no occasion for the assessee respondent to have challenged the reopening of the assessment and the assessee can always defend its case even in the petition preferred by the Revenue. Learned counsel also contended that u/o.41 R.22 CPC the respondent or the assessee gets a right to object in the proceedings preferred by the Revenue or the petitioner, as the case may be, and even need not file cross-objection to defend its case.



7. Learned counsel also contended on merits that prior to 9.3.2007 the case of assessee cannot be covered in the 'business', 'hotel' or 'luxuries' provided in a hotel as these luxuries are not part of the hotel but the lawn is separate and distinct. Learned counsel contended that there are two lawns with the respondent assessee, one which is attached to the hotel and which is basically for the persons who come and stay and the lawn under dispute is entirely different, has a separate access and there is no inter connection or connectivity with hotel and persons who takes lawn separately, do not enter the hotel premises or otherwise. Learned counsel also drew analogy of the pre-amended and post-amended positions and contended that after 9.3.2007 covering of the lawn or open lands were enlarged by the Act and, therefore, these proceedings being prior to 9.3.2007, the Tax Board found as a finding of fact that luxury tax was not leviable and thus supported the order of Tax Board.

Learned counsel contended that there is no question of charging interest or penalty u/s 21(5) of the Act as it is a case of reopening and the Tax Board was well justified in deleting the penalty when the very levy of the said tax was deleted. Learned counsel also contended that the AO was not able to prove as to what was the evasion in this regard, and relied upon following judgments :-



Cooperative Company Ltd. v. Commissioner of Trade Tax, U.P. (2007) 4 SCC 480, Virtual Soft Systems Ltd. v. CIT, Delhi-I (2007) 9 SCC 665, State of Uttar Pradesh & Others v. Aryaverth Chawl Udyoug & Others 2014 SCC OnLine SC 1205, Commissioner of Central Excise, Jaipur v. Shree Rajasthan Syntex Limited & Others (2015) 14 SCC 626, Black Stone Rubber Industries Pvt. Ltd. v. State of Rajasthan & Others RLW 2001 (3) Raj. 1486, CTO, Special Circle 'A', Jodhpur v. Prathvi Singh (2014) 38 Tax Update 269, M/s. Bhilwara Synthetics Ltd., Bhilwara v. State of Rajasthan & Another (2015) 42 Tax Update 227, Assistant Commissioner, Works Contract & Leasing Tax-II, Jaipur v. M/s R.S. Electricals [STR 73/2011, decided on 13.12.2013], CIT v. BPL Systems & Projects Ltd. 1977 (227) ITR 779, Inder Singh Ahluwalia v. Prem Chand Jain & Others 1993 RLR 197, CIT, New Delhi (Central) v. Edward Keventer (Successors) P. Ltd. 1980 (123) ITR 200.

8. In rebuttal insofar as reopening of the assessment is concerned, learned counsel for the petitioner contended that the substantial question admitted by this court is on merits only, and the

assessee respondent had every right to challenge by way of filing a separate petition even challenging the finding of reopening as all the three authorities have upheld the reopening of the assessment. Learned counsel further contended that strictly speaking, provisions of Civil Procedure Code are not applicable in the proceedings under consideration and only u/s 37 which is taking evidence on oath and production of documents that the powers as vested in a court under the Code of Civil Procedure, 1908, can be applied otherwise not, and alternatively contended that even u/o.41 R.22 the assessee having been informed that the appeal has been admitted on question of law by this court, got every right to file a cross-objection within a period of 30 days and since the assessee was silent nor made any application thereafter by way of filing a cross-objection later, now to raise this plea is unjust and cannot raise this issue for the first time before this court when the matter is being heard finally and admittedly this court can only answer the question admitted by this court.

9. I have heard learned counsel for the parties and have perused the material on record including the judgments cited.

10. This court had admitted the petitions on the following question of law :-

(i) whether in the facts and circumstances of the case of Rajasthan Tax Board was justified in law in holding that there is no tax liability of the luxury tax on lawn in the case of respondent prior to Finance Act 2007 i.e. before 09.03.2007.



(ii) whether in the facts and circumstances of the case the Rajasthan Tax Board was justified in law in deleting tax, interest and penalty under the Rajasthan Tax on Luxuries (in Hotel and Lodging Houses) Act 1990 holding that the tax could not be levied as the definition of "Hotel" and "Business" was amended w.e.f. 9.3.2007 without appreciating that the tax was leviable even prior to that date.

(iii) whether in the facts and circumstances of the case, the Rajasthan Tax Board was justified in deleting the tax, interest and penalty without appreciating the provision of the Act including definition of luxuries as contemplated u/s 2(i) of the Act.

11. Insofar as reopening of the assessment is concerned, all the three authorities have come to a concurrent finding that the AO was justified in issuing notice u/s 17(10) of the Act, which gives power to the AO to reassess an assessee and it prescribes "for any reason", and admittedly on the basis of inspection / survey the AO gathered further information from the books of account and in particular profit and loss account, that the assessee had received in addition to the rent from rooms, it also received rent from giving on hire the "lawn" for marriage or other functions/parties, and the respondent has not filed appeal or cross-objection, which the assessee had a right to file, within a period of one month once the petitions were admitted on questions of law. In my view raising of an issue by the learned counsel for respondent, at this juncture cannot be considered. Learned counsel for the respondent has contended that



though the assessee had succeeded on merits, therefore, it may not have filed cross-appeal only against a finding recorded by the authorities and may not have even preferred a cross-objection but gets right to defend when the Revenue has raised the issue on merits.



12. In my view, though the assessee succeeded on merits before the Tax Board but the finding of reopening of the assessment which had been found to be just and proper by all the authorities below, the assessee cannot raise this issue as neither the assessee filed a cross objection or a petition, which it was required at-least by filing a cross-objection within 30 days of the petitions being admitted on 28.11.2011 in the presence of the learned counsel for the respondents, thus I refrain to discuss or consider the arguments or judgments relied upon by the learned counsel for respondent that the AO was precluded from reopening of the assessment as it was on account of a change of opinion or had no jurisdiction. The scope of revision petition being limited, the court is required to answer on the substantial questions of law raised and admitted.

13. It would be appropriate to quote the provisions as it existed and which has been taken note of by all the three authorities, of what is (i)“business”, (ii)“hotel”, (iii)“luxuries provided in the hotel”, and (iv)“turnover”, which is the bone of contention in the instant petitions, and it would also be appropriate to refer to the definitions which were

amended by the Finance Bill No.3 of 2007 with effect from 9.3.2007 :-



Section 2(1)	In This Act, unless the context otherwise requires’ -	
	Provisions prior to Finance Bill No.3 of 2007.	Provisions after the Amendment by Finance Bill No.3 of 2007.
(a)	“business” includes the activity of providing residential accommodation and any other service in connection with, or ancillary to, such activity of providing residential accommodation, by a hotelier for monetary consideration, whether or not such activity of providing residential accommodation is carried on with motive to make gain or profit and	“business” includes the activity of providing residential accommodation or any place for the purpose of organizing parties, ceremonies or functions and any other service in connection with, or ancillary to, such activities for monetary consideration, whether or not such activities are carried on with motive to make gain or profit and
	whether or not any gain or profit accrues from such activity:	whether or not any gain or profit accrues from such activities;
(g)	“hotel” includes a residential accommodation along with the lawns therefore, a lodging house, an inn, a public house or a building or part of a building, where a residential accommodation is provided by way of business;	“hotel” includes a residential accommodation along with the lawns therefore, a lodging house, an inn, a public house or a building or part of a building or any place, where a residential accommodation or a space for the purpose of organizing parties, ceremonies or functions is provided by way of business;
(i)	“Luxuries provided in a hotel” means accommodation such as room or other place or lawn etc., by whatever name called and other services including air-conditioning, coolers, heaters, geysers, television, radio, music, entertainment, extra beds, linen articles and the like in a hotel, for which the rate of charges per day or part thereof is one thousand	No change.

	rupees or more; and Explanation.- (i) Day shall include part of the day. (ii) Room shall include the lawn.	
(u)	“turnover” means the aggregate of the amounts of the monetary consideration receivable by a hotelier or by his agent in respect of luxuries provided in a hotel during the given period.	No change.



Admittedly in the instant case, tariff of the room rent is more than Rs.1000/-, wherein rate of 8% was payable by way of Luxury Tax. On perusal of the plain and simple definition quoted hereinabove, in my view, the assessee was liable to pay the Luxury Tax for providing the lawns separately to the persons who may have taken for organising wedding functions/reception, other parties etc. as “business” defined in the Act is wide enough to cover giving/renting of lawns by a luxury hotel like the assessee, and earning/receiving amount on the basis of hiring of lawns, is certainly a “business income” and admittedly the assessee has included such receipts in the profit and loss account as “business income”. In my view it does not make a difference that the receipts are separately issued for receiving hiring charges of lawns. The learned counsel for respondent tried to justify that the turnover of renting of rooms as well as rent/hiring charges received for lawns is entirely different and there is no co-relation with the same, however, in my view it does not make any difference as long as the “lawns” are in the ownership of hotel and it is also admitted fact

that the lawn is integral part of the hotel. Argument of the learned counsel for respondent that lawn is separate and has separate access and there is no connection or co-relation or interference in between the hotel as such and the “lawns” and that there is a separate lawn for the occupants residing in the hotel, in my view it also does not make any difference whether there is a separate entrance/access or there is no interference of the hotel vis a vis the lawn as long as it is within the same boundary wall in the ownership of the respondent. Admittedly, the assets, namely Hotel and Lawn are owned and possessed by the assessee. On perusal of the definition of “hotel” as given in sub-clause (g) supra, a hotel includes residential accommodation along with “lawns”, therefore, once a lawn having been prescribed as a part of the hotel, the assessee was certainly liable to pay Luxury Tax on giving lawns on hire to the various persons for marriage and for diverse other purposes.



15. On perusal of sub-clause (i) supra, which provides “luxuries provided in the hotel”, includes accommodation such as room or other place or lawn etc., by whatever name called and other services, in my view should also cover the case of assessee in the same footing, and what should be a luxury, is that the room charges in the hotel is per day or part thereof is Rs.1000/- or more and again in Explanation (ii) in sub-clause (i), includes lawn to be part of room, though this may be the lawn which is said to be attached to the hotel. Sub-clause (u) defines “turnover” to

include aggregate of the amounts of monetary consideration receivable by the hotelier in respect of luxuries provided in a hotel and the receipts by way of lawn is also a turnover of the assessee.



16. Taking into consideration the above, in my view the definition of all the sub-clauses in sec. 2, is wide enough to cover the case of assessee to be falling under “luxury” provided in a hotel. The definitions as given above of “business”, “luxuries provided in the hotel” and “turnover”, even prior to the amending Act of 2007 which is under consideration, in my view envisages and make it amply clear that lawns are included in the Explanation (ii) of sec.2(1)(i) for the purposes of levy of Luxury Tax in a hotel, therefore, lawn being part of hotel or even rooms, it should mean to cover up such lawns as well. The definition of “business” is also wide enough as observed earlier, that it includes “in connection with or ancillary to” should cover the renting / giving on hire of the lawn. The “lawn” having been prescribed in sub-clause (g), (i), has certainly got a definite meaning for the purposes of levy of tax under the Act, and in my view, the Tax Board is unjustified in holding that receipts by way of renting of “lawn” could not be covered prior to 9.3.2007. The Tax Board has not even adverted to the various sub-clauses of sec. 2 as referred to hereinbefore, and without adverting to the plain and simple meaning, has held that the liability of assessee is only after 9.3.2007, which in my view is wholly perverse.

17. In my view, the amendment which has been brought into force from 9.3.2007 as given hereinabove, only covers such owners or other entities other than even hotels who have developed lawns and is renting / giving on hire such lawns for organising parties, wedding ceremonies or functions and the definition of "business" has been enlarged, so also definition of "hotel" has also been enlarged to cover "or any place where residential accommodation or a space for the purposes of organising parties/ceremonies or functions" has been added, which makes it clear that insofar as luxury hotels like the assessee, is concerned, it is unaffected by the luxury as admittedly the room rent is exceeding Rs.1000/- or more even prior to 9.3.2007. Thus, in my view, the finding of taxability of renting of "lawn" by the assessee is found in order. Consequently, levy of interest is also upheld, being automatic and goes with the levy of tax.



18. Insofar as imposition of penalty is concerned, though the learned counsel for Revenue vehemently contended that the assessee knowing fully well that it has been receiving huge amounts of rent on hiring lawns, and admittedly it was charging Rs.1000/- per day, then the assessee was certainly required to pay Luxury Tax which was due against the assessee and such being a case of evasion of tax clearly proved that u/s 21(5) of the Act, the AO was well justified in imposing penalty as the words used is "a hotelier is found to evade tax in any form or any method" should cover a case like this and the Tax Board was unjustified in

deleting the same.

19. Admittedly, it is a case of reassessment and the original assessment was completed and thereafter on the basis of material gathered, the case was reopened and it is not a case of imposition of penalty as material was available before the AO even during the course of the return originally having been submitted. The assessee had a reasonable apprehension and bona fide belief that insofar as renting of lawns is concerned, it will affect only on and from 9.3.2007 and this being a debatable issue, at-least penalty in my view is not leviable and has rightly been deleted by the Tax Board.

20. Accordingly, in my view, insofar as the Luxury Tax liability and interest are concerned, the finding reached by the Tax Board cannot be appreciated and is liable to be rejected and is reversed and consequently question nos.1 and 2 raised by the Revenue succeeds and is answered in favour of the Revenue and against the assessee. The issue of penalty is answered against the Revenue and in favour of the assessee.

21. All the petitions stand partly allowed as aforesaid with no order as to costs.

(JAINENDRA KUMAR RANKA) J.