Global Hospitality Licensing SARL — Writ Petition No. 1611 of 2024

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1611 OF 2024

Global Hospitality Licensing SARL .. Petitioner Versus

The Assistant/Deputy Commissioner of Income-tax (International Taxation) - Ward 2(3)(2), Mumbai and Ors. .. Respondents

Sr. Counsel Percy Pardiwalla, a/w Adv. Paras S. Savla, Adv. Pratik B. Poddar, Adv. Harsh R. Shah, Adv. Rajnandini Shukla, for the Petitioner. Adv. Subir Kumar, a/w Adv. Ashita Aggarwal, for the Respondents.

CORAM: B. P. COLABAWALLA & FIRDOSH P. POONIWALLA, JJ.

DATE: JUNE 22, 2026

P. C.

1. Rule. With the consent of the parties, Rule is made returnable forthwith and heard finally.

2. The present writ petition challenges the validity of a penalty order dated 30 March 2023 passed by Respondent No. 1, along with the consequential demand notice issued pursuant thereto. The challenge is Page 1 of 26 JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc premised on the ground that the underlying assessment proceedings have abated due to a failure on the part of Respondent No. 1 to pass the order giving effect to the order of the Commissioner of Income Tax (Appeals) [for short "CIT(A)"] within the period of limitation provided for in of the Income-tax Act, 1961 (for short " ") for the Assessment Year 2009-

10.

3. The Petitioner is a company incorporated in, and is a tax resident of Luxembourg. The Petitioner is engaged in the business of providing marketing activities on a central / group basis to the Marriott chain of hotels worldwide. Initially the Petitioner's group company, i.e., International Hotel Licensing Company S.A.R.L. (for short "IHLC") had entered into an "International Marketing Program Participation Agreement" > (for short "IMPPA") with various Indian hotels. These IMPPAs were later on assigned to the Petitioner in July 2008.

4. The Petitioner filed its Return of Income for the A.Y. 2009-10 on 30th October 2009 declaring Nil income. It claimed the receipts of Rs. 1,21,10,667/- in terms of the IMPPA as not taxable in India as per the Act and, accordingly, claimed a refund of the tax deducted at source (for short "TDS") of Rs. 22,36,809/-. In the notes to the computation of income, the Page 2 of 26 JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc Petitioner mentioned that the aforesaid receipts were not chargeable to tax in India.

5. The Petitioner's case was picked up for a scrutiny assessment. The assessment proceedings culminated in Respondent No. 1 passing a final Assessment Order dated 6th February 2012 under read with read with of the IT Act, wherein he did not agree with the Petitioner's stand that the receipts in terms of the IMPPA were not taxable. Respondent No. 1 treated the IMPPA receipts as business profits as per the provisions of the and taxed them at the rate of 40 percent, along with applicable surcharge and education cess. The Petitioner's tax liability was computed at Rs. 51,14,338/-. Further, Respondent No. 1 did not allow any credit of the tax deducted by the Indian hotels and after levying interest under and of the IT Act, raised a net demand of Rs.69,55,499/-. Simultaneously, Respondent No. 1 initiated penalty proceedings under of the IT Act for furnishing inaccurate particulars of income and concealment of particulars of income vide a notice dated 6 February 2012 issued under of the IT Act.

6. The Petitioner preferred an appeal before the CIT(A), assailing the Assessment Order on the following grounds:

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> JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc i. Respondent No. 1 erred in holding that the Appellant defaulted in complying with notices issued under the Act;

> ii. the receipts under the IMPPA from Indian hotels are not chargeable to tax in India; > iii. due credit of the tax deducted be granted to the Petitioner; and iv. the levy of interest under and of the IT Act be deleted.

7. The Petitioner's appeal before the CIT(A) was decided vide an order dated 31st December 2018, wherein the CIT(A) held as under:

> i. the IMPPA receipts were in the nature of royalty and directed Respondent no. 1 to apply the beneficial rate for computation of tax; > ii. Respondent No. 1 should verify and allow the claim of credit, for tax deducted if found in order;

> iii. charging of interest under and of the IT Act is consequential and directed that the same be levied as per law.

> The CIT(A) also directed Respondent No. 1 to give the Petitioner an opportunity of being heard before passing an order in pursuance of his order.

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8. Aggrieved by the CIT(A)'s order, the Petitioner filed an appeal before the Income-tax Appellate Tribunal (for short "Tribunal").

9. It is the case of the Petitioner that Respondent No.1 was obligated to pass an order giving effect as per the directions of the CIT(A). of the IT Act inter-alia provides that where effect to an order passed by the CIT(A) is to be given other than by passing a fresh assessment, then such effect shall be given within a period of three months from the end of the month in which order of the CIT(A) is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be. Further, as per the second proviso to of the IT Act, where the CIT(A) order requires verification of any issue by way of submission of any document by the Assessee or any other person or where an opportunity of being heard is to be provided to the Assessee, the order giving effect shall be made within the time specified in sub-section (3) of . In the present case, having regard to the directions of the CIT(A), the time limit as per sub-section (3) would apply i.e. the order should be passed within nine months from the end of the Financial Year in which the order of the CIT(A) is received. Page 5 of 26

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10. In view of the fact that no order giving effect to the order of the CIT(A) was passed by Respondent No. 1 within the statutory time limit as aforesaid, and on the Petitioner's understanding that the assessment proceedings had consequently abated, the Petitioner addressed a letter dated 30th May 2022 to the Tribunal seeking withdrawal of its appeal. The said letter expressly clarified that such withdrawal should not be construed as a concession by the Petitioner on the merits of the issues raised in the appeal. The Tribunal, taking note of the aforesaid letter, vide its order dated 12 July 2022, permitted withdrawal of the appeal.

11. Pursuant thereto, the Petitioner filed an application dated 27th March 2023 with Respondent No. 1, stating that the assessment proceedings had abated and, accordingly, any tax collected in excess of the amount payable as per the Return of Income was liable to be refunded along with applicable interest. The Petitioner also submitted several reminder letters in this regard.

Penalty Proceedings

12. Initially, penalty proceedings that were initiated vide notice dated 6th February 2012 (issued along with the assessment order), were kept Page 6 of 26 JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc in abeyance by Respondent No. 1. Subsequently, Respondent No. 1 issued another notice dated 17th November 2022 under read with of the IT Act for Petitioner to show cause as to why the order imposing penalty under of the IT Act should not be passed.

13. The Petitioner in response to the above notice submitted that since no order giving effect to the CIT(A) order was passed within the statutory due date, assessment proceedings stood abated and, hence, no penalty could be levied. Respondent No. 1 again issued a notice dated 20th March 2023 for Petitioner to show cause as to why an order imposing penalty under of the IT Act should not be passed.

14. The Petitioner filed a detailed reply in response to the said notice, requesting that no penalty could be levied in the present situation for the following broad reasons:

> i. Non-passing of OGE within limitation has resulted in assessment proceedings abating: The order giving effect to the CIT(A) order was not passed within the due date mandated in of the IT Act. > As the assessment proceedings during the course of which such Page 7 of 26 JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc penalty proceedings were initiated stood abated, penalty proceedings cannot survive independently. > ii. Change in basis of taxation and no fresh satisfaction is recorded : While the penalty was initiated on account of the best judgement assessment dated 6th February 2012 wherein the IMPPA receipts were taxed as business income at the rate of 40 percent, the basis of taxation had changed when CIT(A) held that said receipts were in the nature of royalty and the beneficial tax rate would apply. Hence, fresh satisfaction was required to be recorded for initiating penalty proceedings while giving effect to the directions of CIT(A), which was not done. > iii. Bar of limitation under : Penalty proceedings are barred by the period of limitation as provided for in of the IT Act.

> iv. Defect in notice under : Charge under which the penalty is proposed (i.e. 'concealment of particulars of income' or 'furnishing of inaccurate particulars of income') was not specified in the penalty notice passed under dated 6th February 2012.

> v. Other grounds on merits for non-levy of penalty. Page 8 of 26

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15. Subsequently, Respondent No. 1 passed a penalty order dated 30th March 2023 under of the IT Act levying a penalty of Rs 12,11,070/- on the Petitioner, after obtaining approval of Respondent No. 2.

16. At the time of hearing, the learned Counsel argued that assessment proceedings during the course of which the penalty proceedings were initiated have abated. It was submitted that Respondent No. 1 was obligated to pass an order to give effect to the direction as contained in the order of the CIT(A) dated 31st December 2018. In general parlance, such an order is called an Order Giving Effect (for short "OGE") which is an order passed under read with of the IT Act as per timelines provided for in of the IT Act. He submitted that the determination of total income, the computation of the tax liability thereon and, therefore, the determination of the net demand payable, after giving credit for the taxes already paid, grant of consequential relief and implementation of appellate directions constitute an integral part of one composite assessment process.

17. The learned Counsel submitted that in the instant case, the CIT(A), by his order dated 31st December 2018 (received on 3rd January 2019 by the Petitioner), directed Respondent No. 1 to: Page 9 of 26

> JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc i. tax the IMPPA receipts as royalty, ii. identify the applicable beneficial tax rates and compute the tax payable by applying the reduced tax rates, and iii. grant due credit for the tax deducted subject to necessary verification. > It was explained that Respondent No. 1 had originally taxed the receipts at 40% by treating them as business profits; however, pursuant to the directions of the CIT(A), such receipts were required to be characterised as royalty and taxed at the beneficial rates provided for in of the IT Act. > Further he stated that the term 'assessment' bears a comprehensive meaning, it comprehends the whole procedure for ascertaining the total income and determination of tax liability. The latter is as crucial as the former. provides that the Assessing Officer after taking into consideration the material furnished by the Assessee or that which he has gathered, by an order in writing, make an assessment of the total income or loss of the Assessee and determine the sum payable by him or refund the amount due to him on the basis of such

assessment. The passing of an Assessment Order thus contemplates not only the determination of the total income but also the tax payable thereon which entails not only the determination of the tax on the total income either as per the rate prescribed in the or provided Page 10 of 26 JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc for in Chapter XII or as per the provision of a Double Taxation Avoidance Agreement. Thereafter, the interest that is payable under the various sections has to be computed and after giving credit for the prepaid taxes, the net demand or refund, as the case may be, is to be quantified and the demand notice has to be issued under of the IT Act. The judgment of the Supreme Court in (1991) 191 ITR 634 supports the aforesaid contention, was the submission of the Counsel.

18. The learned Counsel submitted that since the order of the CIT(A) was undisputedly received by Respondent No. 3 on or before 31st March 2019, the time limit for passing the OGE as per read with of the IT Act was nine months from the end of the Financial Year in which the order of the CIT(A) was received. Accordingly, the due date for passing the OGE in the present case was 31st December 2019. As no such order was passed till date, the assessment proceedings, consequently, stand abated.

19. The learned Counsel explained that in consonance with the order passed by CIT(A), Respondent No. 1 had to pass an OGE and re-compute the Petitioner's income and tax payable under the Act which computation will supersede the original Assessment Order. However, since no such OGE is Page 11 of 26 JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc passed within the statutory due date, there is no enforceable Assessment Order available as of date, and Respondent No. 1 has lost his right to recover the demand for the year under consideration. In the absence of a valid and subsisting Assessment Order, the assessment proceedings stand abated and the Return of Income is liable to be treated as accepted. It follows that all proceedings arising out of and consequent to such assessment become infructuous. Hence, in the present context, when the assessment proceedings don't survive, the penalty proceedings automatically don't survive, was the argument.

20. The learned Counsel relied on the judgment of the Supreme Court in the case of [2003] 261 ITR 367 (SC) and a judgment of this Court dated 23rd March 2026 in the case of no. 468 of 2026] to support his contention that the order giving effect has to be passed within the limitation period provided for in of the IT Act and that was not being done, the income declared in the return filed by the Petitioner must be accepted.

21. Per contra, Mr. Subir Kumar, the learned Counsel appearing on behalf of the Revenue opposed the Petition by submitting that proceedings under are separate proceedings distinct from assessment Page 12 of 26 JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc proceedings. Mr. Kumar further submitted that in the present case there was never any dispute regarding the existence of taxable income and only the characterisation of such receipts and the applicable rate of tax came to be modified by the CIT(A). Mr. Kumar explained that there is a distinction between an order passed under of the IT Act and that passed under of the IT Act. Sub-section (3) envisages a fresh order of assessment, while sub-section (5) requires passing of an order that is limited to the directions given by the appellate authority. Hence, Mr. Kumar contended that no adverse consequence could follow merely because an order giving effect has not been passed within the stipulated timelines, and the same is not fatal to the assessment, since it is only an Administrative Order. Mr. Kumar further pointed out that in case of a delay in passing the order giving effect, the Assessee is granted interest under of the IT Act, and, hence, no prejudice is caused to the Assessee. Thus, he submitted the assessment proceedings would not abate.

22. The learned Counsel for the Petitioner in relation to the argument of the Revenue that an order giving effect is merely an Administrative Order and no adverse consequence would follow for failure to adhere to the timelines, argued that what remains as a final order after giving effect to the orders of the appellate authorities is an order of assessment that Page 13 of 26 JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc is capable of enforcement, and it cannot be termed as an Administrative Order. Reliance was placed on the judgment of this Court in the case of [1994] 73 Taxman 231 (Bombay) in this regard.

23. Having considered the rival submissions, and without addressing the other issues raised, the present petition can be disposed of on a limited issue - namely, whether the assessment proceedings stand abated, thereby rendering the penalty proceedings unsustainable. The core issue for determination is whether, in the absence of an order passed by Respondent No.1 pursuant to the order of the CIT(A) within the period of limitation specified in of the IT Act, the return of income filed by the Petitioner attains finality. If so, it must follow that the assessment proceedings stand abated and, consequently, all proceedings arising therefrom become infructuous. In such circumstances, the penalty order cannot be sustained in law.

24. The Petitioner has drawn our attention to the provisions of and of the IT Act, the relevant portion of which is reproduced hereunder:

Page 14 of 26 > JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc "(3) Notwithstanding anything contained in sub-sections (1) , (1A) and (2), an order of fresh assessment or fresh order under , as the case may be, in pursuance of an order under or or or , setting aside or cancelling an assessment, or an order under , as the case may be, may be made at any time before the expiry of nine months from the end of the financial year in which the order under or is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under or is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be : > Provided that where the order under or is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under or is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted. .... > (5) Where effect to an order under or or or or or is to be given by the Assessing Officer or the Transfer Pricing Officer, as the case may be, wholly or partly, otherwise than by making a fresh assessment or reassessment or fresh order under , as the case may be, such effect shall be given within a period of three months from the end of the month in which order under or or or is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under or is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be : > Provided that where it is not possible for the Assessing Officer or the Transfer Pricing Officer, as the case may be, to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer or the Transfer Pricing Officer, as the case may be, if satisfied, may Page 15 of 26 JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc allow an additional period of six months to give effect to the order: > Provided further that where an order under or or or or or requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under or or or or or shall be made within the time specified in sub-section (3)."

25. of the IT Act inter alia provides that where the CIT(A) has set aside the assessment made by the AO, then, the AO is required to pass a fresh Assessment Order under of the IT Act, within nine months from the end of the Financial Year in which the order of CIT(A) is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. Further, of the IT Act inter alia provides that where effect to an order passed by the CIT(A) is to be given otherwise than by passing a fresh assessment, such effect shall be given within a period of three months from the end of the month in which order of the CIT(A) is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be. Further, as per the second proviso to of the IT Act, where as a consequence of the order of the CIT(A), verification of any issue by way of Page 16 of 26 JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc submission of any document by the Assessee or any other person is necessary or where an opportunity of being heard is to be provided to the Assessee, the order giving effect shall be made within the time specified in sub-section (3). Thus, the larger time limit of nine months as provided for in sub-section (3) is made applicable to cases governed by sub-section (5) which require verification or the grant of an opportunity of being heard, as is the fact in the present case.

26. In the present case, the CIT(A) has passed his order directing Respondent No. 1 to tax the receipts from the IMPPA as royalty and compute the tax payable by applying the reduced tax rate. Further, the CIT(A) also directed to grant due credit of the tax deducted at source subject to necessary verification and after providing an opportunity of being heard. Thus, as per read with of the IT Act, Respondent No. 1 had nine months from the end of the Financial Year in which the order of the CIT(A) was received by the relevant authority to pass his order. Accordingly, the limitation period in accordance with read with of the IT Act for completing an assessment pursuant to the order of the CIT(A), is as under: Page 17 of 26

> JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc Particulars Date Order passed by the CIT(A), in appeal against the final assessment 31.12.2018 order Financial Year in which the relevant authority received the FY 2018-19 CIT(A) order Limitation as per read with of the IT Act is maximum of nine months 31.12.2019 from end of the FY in which the PCCIT / CCIT / PCIT / CIT received the CIT(A) order

27. Mr. Kumar has not disputed the fact that no order giving effect to the CIT(A) order is passed till date. However, he contends that there is no change in the taxable income, only the characterisation of such receipts and the applicable rate of tax came to be modified by the CIT(A). Further, the direction to verify and allow the credit for the tax is only an administrative exercise. Thus, non-passing of the order giving effect would not have any adverse consequences.

28. We are unable to accept the contentions urged on behalf of the Revenue. The CIT(A) has altered the very basis of taxation and directed application of the beneficial rate of taxation applicable to royalty. Page 18 of 26 JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc Consequently, even though the assessed income remained the same, nevertheless, the original computation of tax liability was set at naught and required fresh determination through a valid order giving effect. So far as the submission of the Revenue as to the nature of an order passed in consequence of orders of the appellate authorities with a view to giving effect to the directions contained therein, it is difficult to hold that such an order is an Administrative Order. An order contemplated by is not ministerial in nature but quasi-judicial, as it determines the rights and liabilities of the Assessee in accordance with the appellate directions. It may involve verification, quantification of income, re-computation of tax liability and net sum payable by the Assessee - all of which, collectively or independently have substantive civil consequences. Therefore, such an order cannot be trivialised as administrative so as to escape the rigor of limitation. The power coupled with an obligation on the Assessing Officer is to make an assessment under or 144 of the . The final order after giving effect to the orders of the appellate authorities is an order of assessment and the same is complete only upon computation of the total income and the net tax payable by an Assessee. It is well settled that such an order is an appealable order in terms of of the IT Act. This Court in [1994] 73 Taxmann 231 (Bombay), has held as under: Page 19 of 26

> JUNE 22, 2026 Darshan Patil 3-WP-1611-2024.doc "10. We have carefully considered the rival submissions. There is no dispute about the proposition that there is no inherent right of appeal. It is to be specifically conferred by the statute providing for an appeal. But as stated by the Supreme Court in CIT v. Ashoka Engg. Co. [1992] 194 ITR 645, it is an equally well- settled proposition or law that, if there is a provision conferring a right of appeal, it should be read in a reasonable, practical and liberal manner. We are, therefore, to construe the provisions of in the light of this well-settled legal position. So far as the first submission is concerned which relates to the nature of an order passed by the ITO in consequence of orders of the appellate authorities with a view to giving effect to the directions contained therein, it is difficult to hold that such an order is an administrative order. The power of the ITO is to make assessment under or 144. It is that assessment which is the subject-matter of appeal. The appellate authority, on an appeal against an order of assessment, has power to confirm, reduce, enhance or annul the assessment or to set aside the assessment and refer the case back to the ITO for making a fresh assessment in accordance with the directions given by such authority (section 251). Evidently the effect of an appellate order is that the assessment either stands confirmed, reduced or enhanced or it stands annulled or set aside. In case of confirmation, reduction or enhancement the original order of assessment stands modified to the extent of the directions given by the appellate authority. In the case of annulment, the order becomes non est. In case an order is set aside, the authority has to start the entire process afresh and make a fresh order of assessment complying with the directions given by the appellate authority. It is, thus, clear that what remains as a final order after giving effect to the orders of the appellate authorities is an order of assessment under or 144. It cannot be anything else." (emphasis supplied)