GSTAAD Hotels Pvt Ltd — Writ Petition No. 3613/2022

2026:BHC-OS:10670-DB 5.wp.3613.22.doc IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION WRIT PETITION NO. 3613 OF 2022 GSTAAD Hotels Pvt Ltd Santacruz (W), Mumbai .. Petitioner Versus Assistant Commissioner of Income Tax, Circle 2(1),(1), Mumbai .. Respondent Mr. Nishit Gandhi, Advocates for the Petitioner. Mr. Abhishek Mishra, Advocates for the Respondent-Revenue. CORAM: B. P. COLABAWALLA & ANJALI by Digitally signed ANJALI FIRDOSH P. POONIWALLA, JJ. TUSHAR ASWALE TUSHAR ASWALE 14:58:05 +0530 Date: 2026.04.27 DATE: APRIL 24, 2026 P. C.

1. Rule. Respondent waives service. With the consent of the parties, Rule made returnable forthwith and heard finally. The present Petition challenges reassessment proceedings for Assessment Year (AY) 2014-15 initiated against the Petitioner by issue of Notice dated 30th March 2021 under of the Income Tax Act, 1961 [for short "the Act"]. The Petitioner has also challenged the orders dated 9 th February 2022 and 18th February 2022 disposing objections raised by the Petitioner against the re-opening of the assessment. FACTS: Page 1 of 19 Thereafter, the case of the Petitioner was selected for scrutiny assessment. During the course of the said assessment, the Assessing Officer issued Notices and raised certain queries. He specifically called for the details in respect of the expenditure and in particular sought an explanation as regards the claim of deduction under . In response, the Petitioner filed various submissions before the Assessing Officer. In particular, vide submissions dated 19.09.2016 and 27.12.2016 filed before the Assessing Officer, the Petitioner provided explanation and details as regards the deduction claimed under . These letters are annexed as Exhibit C to the present petition [Ref. Pgs. 78 and 79 of the Petition]. Thereafter, the assessing officer went on to pass the assessment order under of the Act, whereby he specifically mentioned and allowed the claim of deduction under of the Act. A copy of this assessment order dated 29.12.2016 is annexed to the Petition as Exhibit D [Ref. pg. 81 of Page 2 of 19 APRIL 24, 2026 Aswale ::: Uploaded on - 27/04/2026 ::: Downloaded on - 02/05/2026 06:11:38 ::: 5.wp.3613.22.doc the Petition]. In the said assessment order, the Assessing Officer categorically observed that: > 4. The Assessee has in its ITR claimed loss on account of specified business of operating and maintaining a hotel of 2 star or above category as per sec 35AD and the same was claimed by them under sec 35AD while filing the return of income which is hereby allowed as under: > Particulars Amount (Rs.) Deduction claimed as 6,39,73,36,790/- > 5.wp.3613.22.doc per books Miscellaneous expenditure as Rs. 73,87,325 given in Annexure 7 of 3CD Total Rs. 647,49,06,704 Less: Net foreign exchange Rs. 7,75,69,914 gain post capitalisation (annexure 7 of 3CD) Net amount claimed under Rs. 639,73,36,790 It is seen From the above that during the year the assassee has capitalised pre-operative expenses of Rs.293,39,48,980 in the books of accounts (claimed expenditure) and accordingly claimed loss of the same under and not as normal business loss under of the IT Act. On further verification of schedule 10.2 of the balance sheet it is seen that the various expenditures booked as preoperative expenses pending capitalisation are merely of revenue nature and not of capital nature as prescribed in of the IT Act. > "As per says any expenditure of Capital nature shall not include expenditure incurred on the acquisition of any land or goodwill or financial instrument". In the relevant case the assessee has claimed preoperative expenses pending for capitalisation of Rs. 293,39,48,980/- u/s 35AD of the Act. It is very clear to see the books of accounts of the assessee that the preoperative Page 5 of 19 APRIL 24, 2026 Aswale ::: Uploaded on - 27/04/2026 ::: Downloaded on - 02/05/2026 06:11:38 ::: > 5.wp.3613.22.doc expenses will be separated from the claimed under , hence the net claimed under will be restricted to Rs.346,33,87,810/- (639,73,36,790- 293,39,48,980) and not Rs.639,73,36,790/-. The assassee should have booked such expenses in the profit and loss account and accordingly claim the loss under which has a maximum limit of set of 8 years only. Thereafter, another order disposing objections came to be passed on 18.02.2022, whereby, for the first time, the Petitioner was informed that the reopening was initiated on the basis of the opinion of the revenue audit party whereby an audit objection was raised in respect of a part of the claim (Rs.293,39,48,980/- in respect of pre-operative expenses) under stating that the said expenditure is Revenue in nature and not Capital in nature, and therefore, should have been allowed only for a period of 8 years under of the Act. Page 7 of 19 APRIL 24, 2026 Aswale ::: Uploaded on - 27/04/2026 ::: Downloaded on - 02/05/2026 06:11:38 ::: 5.wp.3613.22.doc

6. Against the said order disposing of objections and challenging the very initiation of reassessment proceedings by issue of a Notice under of the Act, the Petitioner has approached this Court. SUBMISSIONS:

7. Mr. Gandhi, the learned Counsel for the Petitioner, furnished a brief synopsis of his propositions to challenge the impugned Notice under and the reasons for reopening, on the following primary counts among others: > i. The reasons for reopening clearly state that the claim for deduction under was considered by the Assessing Officer in the original assessment and out of that said claim a part of the claim is sought to be treated as a revenue expenditure so as to restrict the carry forward of the same to a period of eight years in terms of of the Act, instead of an indefinite period in terms of , read with , of the Act. Clearly therefore, there is no income escaping assessment in the present case in as much as the reopening is intended to merely reclassify the loss under r.w.s. 73A to Page 8 of 19 APRIL 24, 2026 Aswale ::: Uploaded on - 27/04/2026 ::: Downloaded on - 02/05/2026 06:11:38 ::: > ii. He also submitted that as per the second order disposing objections, it is clearly pointed out that the claim of expenditure was to be treated as revenue in nature and not Capital in nature, and therefore, the same had to be allowed only for a period of 8 years in Page 11 of 19 APRIL 24, 2026 Aswale ::: Uploaded on - 27/04/2026 ::: Downloaded on - 02/05/2026 06:11:38 ::: > 5.wp.3613.22.doc terms of instead of an indefinite period as per ; iii. He also fairly admitted that the reopening of assessment is based on the audit objections raised by the revenue audit party. iv. He further relied on the Affidavit in Reply filed by the Respondent. Consequently he submitted that the Writ Petition be dismissed. RULING:

9. We have heard the learned counsel for the parties and have also perused the material on record. At the very outset, on a perusal of the reasons for reopening, we note that the reopening is initiated based on the facts already on record of the Assessing Officer, the Respondent herein. There is no new fact or any new tangible material, basis which the impugned notice under is issued. We also note that the original assessment in the case of the Petitioner was concluded under of the Act vide order dated 29.12.2016 wherein the claim of deduction under Page 12 of 19 APRIL 24, 2026 Aswale ::: Uploaded on - 27/04/2026 ::: Downloaded on - 02/05/2026 06:11:38 ::: 5.wp.3613.22.doc was also considered. We also note that the impugned reassessment proceeding is initiated beyond a period of four years from the end of the relevant assessment year. Therefore, in terms of the first proviso to , such a re-assessment could be initiated only if there was a failure on the part of the Assessee to disclose fully and truly all material facts necessary for the purpose of assessment.

8. The present case relates to assessment year 2005-06. The return of income for the assessment year 2005-06 was taken up for scrutiny which culminated in an assessment order dated November 26, 2007, under of the Act. Thereafter, respondent No. 1 issued the impugned notice dated February 28, 2011, under of the Act which was after the expiry of four years from the end of the relevant assessment year. In such a scenario, the first proviso to of the Act was attracted and no action for initiation of reassessment proceedings could be initiated unless the income chargeable to tax had escaped assessment by reason of the failure on the part of the petitioner to disclose fully and truly all material facts. Mr. Dastoor, the learned senior counsel appearing on behalf of the petitioner, submitted that apart from making a bald assertion that there was a failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment, no details whatsoever were given with reference to the same. He, therefore, submitted that the initiation of the reassessment proceedings for the assessment year 2005-06 were bad-in-law and, accordingly, prayed for quashing the impugned notice. On the other hand, Mr. Gupta, the learned senior counsel appearing on behalf of the respondents, submitted that the reasons for initiating the reassessment proceedings under of the Act clearly stated that there had been a failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment and, therefore, respondent No. 1 was fully justified in initiating the reassessment proceedings. > "28. It is true that the reasons for initiating reassessment proceedings, in fact, state that there is a failure on the part of the Petitioner to disclose fully and truly all material facts necessary for its assessment. However, we find that merely making this bald assertion is not enough. It is now well settled that reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible, and no addition can be made to those reasons. Further, no inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to reach the conclusion as to whether there was a failure on the part of the Assessee to disclose fully and truly all material facts necessary for assessment for the concerned assessment year. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on the material on record. What is important is that he must disclose in the reasons as to which fact or material was not disclosed by the Assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and the evidence. That vital link is a safeguard against the arbitrary reopening of a concluded assessment. ... > 29. In the present case, admittedly there are no details given by the Assessing Officer (the 1st Respondent) as to which fact or material was not disclosed by the Petitioner that led to its income escaping assessment. There is merely a bald assertion in the reasons that there was a failure on the part of the Petitioner to disclose fully and truly all material facts, without giving any details thereto.

14. In view of the above, it is quite evident that, in the absence of any failure on the part of the Assessee to disclose necessary facts, the impugned reassessment proceeding is bad in law and void in terms of the first proviso to . In that view of the objections and the consequential reassessment proceedings deserve to be quashed on this ground itself.

15. We hold accordingly and hereby quash and set aside the Notice under dated 30th March, 2021 [Exihibit. E], the orders disposing of objections dated 9th February 2022 [Exihibit . H] and 18 th February 2022 [Exihibit. I] and all consequential proceedings thereto.

16. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, in the facts and circumstances of the case, there shall be no order as to costs.

17. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order. [FIRDOSH P. POONIWALLA, J.] [B. P. COLABAWALLA, J.]