

American Hotel & Lodging Association Educational Institute v. Central Board of Direct Taxes & Ors.

Civil Appeal No. 3468 of 2008

[2008] 8 S.C.R. 117 | 2008-05-09

Whether CBDT could refuse initial approval under section 10(23C)(vi) because the foreign educational institute remitted its alleged Indian surplus abroad; how the historical approval, income-application and monitoring provisos should operate; and which authority should reconsider this application.

10(23C)(vi) | 10(23C) first proviso | 10(23C) second proviso | 10(23C) third proviso | 10(23C) thirteenth proviso | 10(22) (repealed)

Two-judge bench | S.H. Kapadia, J. | B. Sudershan Reddy, J.

Assessment years: 1999-2000

Remand only; later limited overruling and prospective operation

American Hotel granted no final exemption: it set aside refusal and remitted the AY 1999–2000 application, with only the actual-existence threshold settled. Indian educational activity remained necessary, and lawful accounting-income/use/investment conditions and annual compliance still mattered; no fixed percentage or tax-free-remittance rule was laid down. New Noble (19 October 2022), in the actual text checked, overruled the interpretation of solely only to the extent stated in paragraph 76(e), separately rejected restrictions on examining existing accounts at approval, and expressly made its declared law prospective without specifying a first AY. Read this historical holding with that limitation; comprehensive later treatment, transition consequences and current law remain unverified.

01 FACTS OF THE CASE

The US-based institute supplied hospitality education through its Indian arrangements with the Government of India and the National Council. Its obligations included curricula, course materials, faculty development, examinations and certification. A liaison office opened in 1994 and became a branch in 1995. Fees collected in India, less branch running expenses, were remitted to the head office for materials and services. The institute maintained that branch receipts less local expenses did not measure its real surplus because head-office costs were omitted (paragraphs 4–14).

The Department had accepted its section 10(22) educational status, including the unchallenged 14 February 1996 AAR ruling, and it enjoyed the earlier exemption. Following the statutory change effective 1 April 1999, it applied in Form 56D on 7 April 1999 for initial approval for AY 1999–2000. CBDT rejected the application on 12 October 2004 on the footing that surplus had been repatriated and income had not been applied to education in India. The Delhi High Court upheld that refusal on 24 November 2006, treating the Indian gross receipts as income required to be applied in India. These were the decisions challenged, not a final Supreme Court computation of net income (paragraphs 9–16, 41).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

The 2008 Court examined the nature of the institution and its Indian educational activities under the earlier section 10(22) and the new section 10(23C)(vi). It treated an incidental surplus as insufficient by itself to establish a profit purpose and referred to a predominant-object approach. This is historical reasoning: New Noble later rejected that interpretation of solely, expressly to the extent stated in paragraph 76(e), with prospective operation. The distinction between incidental educational surplus and profit-oriented objects was not abolished (American Hotel paragraphs 27–31; New Noble paragraphs 50–51, 60, 63, 76(b), 76(e), 78).

The Court read the provisos as an approval and monitoring framework. The authority could call for documents, including annual accounts, to assess genuineness; application or accumulation of income, investment modes and compliance with conditions also required attention. It distinguished stipulating conditions on approval from testing future compliance. Conditions could govern application/utilisation of income and investment patterns, provided they did not conflict with the Act. For this transitional applicant, the authority could require a percentage of accounting income to be used for education in India after examining its constitution, agreements and actual Indian educational commitments. The Court fixed no percentage itself (paragraphs 32–34, 39).

The applicant had to receive an opportunity to comply with the newly introduced monitoring requirements; earlier exemptions need not be reopened merely for non-compliance with the new third proviso. After approval, breach of conditions or the statutory withdrawal grounds could lead to withdrawal following the thirteenth-proviso procedure, which included a reasonable opportunity to show cause. The Court spoke of annual assessment of compliance. Its approval/assessment distinction must now be read with the bounded New Noble ruling: existing institutions' available accounts and income/expenditure patterns may be examined at approval, with no blanket rule postponing that inquiry until assessment (American Hotel paragraphs 23, 32–34, 36, 39; New Noble paragraphs 61–63, 76(f)).

For the foreign institution, the Court separated where education was imparted from where income was applied. Imparting education in India was necessary; foreign location of the institution did not itself defeat approval. Reading Oxford University Press, the Court distinguished a branch merely engaged in commercial publishing from actual educational activity in India. It declined to import the words in India into the third proviso's income-application language, while requiring application wholly and exclusively to the institution's objects. This did not dispense with Indian education, nor prevent lawful approval conditions requiring a share of accounting income to be used for education in India (paragraphs 30–31, 35–39).

Outward remittance was not treated as synonymous with application or utilisation of income. The Court distinguished accounting income at this exemption stage from taxable income; it neither fixed the institute's true surplus nor finally exempted all remittances or receipts. The actual-existence threshold was found satisfied, so CBDT could not reject the application on that ground. Other questions remained for fresh consideration under the historical framework (paragraphs 39–41).

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

The assessee's civil appeal was allowed without costs. The Court set aside both the Delhi High Court judgment and CBDT's refusal and remitted the application to CBDT for fresh consideration in accordance with the judgment. The institute had met the threshold of actual existence as an educational institution, which CBDT could not reject on remand. Rule 2CA(1A) led to remand to CBDT because this 7 April 1999 application had already been rejected on 12 October 2004. No approval was itself issued, no final annual exemption or tax computation was ordered, and the question of one-year versus three-year approval was expressly left undecided (paragraphs 40–45).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee, to the extent of setting aside refusal, establishing the educational-institution threshold and obtaining reconsideration

Civil Appeal No. 3468 of 2008 allowed; High Court judgment and CBDT refusal set aside; application remitted to CBDT; no order as to costs

Interpretive issues and actual-existence threshold decided; final approval, its duration, annual exemption and computation not determined

Historical AY 1999–2000 initial-approval application and transitional monitoring framework. This is not an unconditional exemption, automatic continuation of prior approval, tax-free-remittance rule or fixed percentage requirement. Later New Noble treatment and prospective limitation must remain visible; present law is not certified.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Separate four questions in an educational-exemption file: the institution's objects, its actual educational activity in India, the correct accounting measure and use of income, and compliance with approval conditions in the relevant period. For a foreign institution, obtain the agreements, evidence of Indian teaching/curricula/examinations, branch and head-office cost support, and an explanation of each remittance. Gross receipts less local expenses should not be assumed to prove the amount or destination of an educational surplus. The 2008 Court left this application to be reconsidered and did not determine the final exemption.

Do not publish the old predominant-object test or an accounts-only-at-assessment proposition as unqualified current law. In the actually checked New Noble text, solely means exclusively educational; available accounts may be examined at approval; incidental educational surplus remains distinguishable from a profit-oriented object; the express overruling is limited as stated in paragraph 76(e); and paragraph 78 directs prospective operation without identifying a first AY. That bounded comparison does not settle every transition issue or the later status of the foreign-income reasoning. Verify the law and procedural framework for the actual year, with no automatic mapping to the Income-tax Act, 2025.

Source: See the proposition-specific paragraph and PDF-page references below.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, source boundary and originating proceeding

Source url: [Open cited source](#)

Pdf pages: 1; 6; 7

Paragraphs: Cover; jurisdictional preface; 1–2

Source role: reported metadata and judicial text

2.

Topic: Indian educational obligations, branch and account facts

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9; 10; 11

Paragraphs: 4–14

Source role: judicial text

3.

Topic: Refusal and High Court ruling

Source url: [Open cited source](#)

Pdf pages: 11; 12

Paragraphs: 15–16

Source role: judicial text

4.

Topic: Submissions distinguished from findings

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14; 15; 16; 17; 18; 19; 20

Paragraphs: 17–22

Source role: party submissions

5.

Topic: Quoted statutory framework and withdrawal procedure

Source url: [Open cited source](#)

Pdf pages: 20; 21; 22; 23; 24; 25

Paragraphs: 23–25

Source role: statutory text quoted in judgment

6.

Topic: Historical educational-character and surplus analysis

Source url: [Open cited source](#)

Pdf pages: 25; 26; 27

Paragraphs: 26–31

Source role: judicial text

7.

Topic: Approval scrutiny, conditions and withdrawal

Source url: [Open cited source](#)

Pdf pages: 28; 29; 30

Paragraphs: 32–34

Source role: judicial text

8.

Topic: Indian education and income-application distinction

Source url: [Open cited source](#)

Pdf pages: 31; 32; 33

Paragraphs: 35–39

Source role: judicial text

9.

Topic: Settled threshold, remand and express AY/duration limit

Source url: [Open cited source](#)

Pdf pages: 33

Paragraphs: 40–41

Source role: judicial text

10.

Topic: Historical Rule 2CA and final disposition

Source url: [Open cited source](#)

Pdf pages: 34; 35

Paragraphs: 42–45

Source role: judicial text

11.

Topic: New Noble quotation and examination of American Hotel

Source url: [Open cited source](#)

Pdf pages: 41; 42; 43; 44; 45; 46; 47; 48; 49

Paragraphs: 44–51

Source role: bounded later judicial comparison

12.

Topic: New Noble limited interpretation and accounts scrutiny

Source url: [Open cited source](#)

Pdf pages: 53; 54; 55

Paragraphs: 58–63

Source role: bounded later judicial comparison

13.

Topic: New Noble express limited overruling, surplus and approval conclusions

Source url: [Open cited source](#)

Pdf pages: 59; 60; 61

Paragraphs: 76(a)–(f)

Source role: bounded later judicial comparison

14.

Topic: New Noble prospective direction and appeal disposition

Source url: [Open cited source](#)

Pdf pages: 61; 62

Paragraphs: 78

Source role: bounded later judicial comparison

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

10(22) (repealed): Predecessor exemption and accepted prior status; not the approval provision governing the application in issue.

10(23c) first and second provisos: Application and authority's vetting powers, including accounts and genuineness.

10(23c) third proviso: Income application/accumulation and investment monitoring under the historical text.

10(23c) twelfth and thirteenth provisos: Guidance on accumulated-income transfers and withdrawal of approval after the prescribed procedure.

11(1)(a), 11(5), 13, 12aa; 10(20a), 10(22b): Statutory comparison, investment modes or quoted historical context; no separately disposed section 11 assessment or independent ruling under every cited provision.

OTHER LAWS CONSIDERED

1.

Name: Income-tax Rules, 1962

Provisions: Rule 2CA(1A); Rule 2CA(2); Rule 2CA(3)

Role: Historical prescribed-authority and Form 56D setting; remand to CBDT for this pre-3 April 2001 application already rejected before 31 May 2007. No present procedural advice.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.H. Kapadia, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SPECIFIED LATER JUDICIAL COMPARISON AND PROSPECTIVE LIMITS

Case: M/s New Noble Educational Society v. The Chief Commissioner of Income Tax 1 and Anr.

Decision date: 2022-10-19

Reviewed case id: sc-2022-10-19-new-noble-educational-society

Source asset id: 2022_18_1082_1143

Paragraphs actually compared: 44–63 and 73–78; complete physical pages 41–55 and 59–62, plus identity text on page 1

Finding: Paragraphs 50–51 require exclusively educational objects rather than a predominant-object test. Paragraph 76(e) expressly overrules American Hotel and Queen's Education Society only to the extent of their interpretation of solely; this express limitation qualifies the broader language of paragraph 60. Separately, paragraphs 61–63 and 76(f) reject constraints on examining available accounts and income/expenditure history at approval. Paragraphs 63 and 76(b) preserve the distinction between incidental educational surplus and profit-oriented objects.

Prospective limit: Paragraph 78 expressly directs prospective operation of the law declared, allows claims based on subsequent events to be raised in fresh applications, and dismisses the appeals before that Court. It specifies no first assessment year and supplies no complete transition formula for pending or completed assessments.

What is not claimed: No wholesale overruling of every American Hotel proposition, no general overruling of Surat Art Silk, no retrospective erasure of the 2008 remand, and no certification that the separate foreign-income/application analysis remains current. New Noble's bounded text does not independently adjudicate this American Hotel application or determine its eventual result.

IDENTIFIED LOWER-COURT PROCEEDING

Court: High Court of Delhi at New Delhi

Decision date: 2006-11-24

Case number: Writ Petition (Civil) No. 17978 of 2004

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 35 PDF pages; SHA-256

a2f799b62963cb56232afd4ca79fd029acbbdeac89aafc93669934b8765a598b. Original bytes preserved.

Judicial paragraphs 1–45 on physical PDF pages 6–35 (SCR 122–151), starting at the author/leave-granted line on page 6.

Pages 1–5 and page 6 above that line are reporter/editorial matter. No adjacent judgment.

[Open cited source rendition](#)

Reported citation, date, appeal number, judges and author verified from source cover and judicial opening. Metadata neutral citation 2008INSC623 is not printed in the inspected source and is not independently verified here.

Paragraph 41 expressly identifies the application as seeking initial approval for the accounting year ending 31 March 1999, AY 1999–2000. AY 1998–99 in paragraph 34 is prior section 10(22) exemption history, not an additional AY finally adjudicated for exemption here. Paragraph 41 leaves undecided whether initial approval should cover the single accounting year or three years.

The 35-page SCR asset includes six pages of reporter material before/around the judicial opening; the judgment itself is paragraphs 1–45, beginning at the bottom of physical page 6. Reporter summaries are not substituted for the judicial disposition.; AY 1999–2000 is the application year expressly stated in paragraph 41. AY 1998–99 is historical exemption context in paragraph 34; no extra AY disposal or automatic three-year approval is inferred.; The alleged remittance/surplus figures and head-office expense evidence in paragraphs 13–14 and 22 are submissions/background. The Supreme Court did not reconcile them into a final taxable or exempt amount.; Paragraph 23 labels its extract by reference to the Finance Act, 1998, but the reproduced text includes later-dated 2001 accumulation language and other provisos. It is not treated as an independently verified verbatim enactment as at 1 April 1999, much less as current statutory text.; The authority could impose a lawful percentage-of-accounting-income condition, but the judgment imposed no numeric percentage, expenditure ratio or universal remittance cap.; Rule 2CA and Form 56D are reported in their historical setting. The Court expressly left approval duration undecided and remitted to CBDT under the then-applicable transitional rule.; New Noble paragraph 60 must be read with paragraph 76(e)'s express limited-overruling language and paragraph 78's prospective direction. Approval-stage accounts reasoning is separately addressed in paragraphs 61–63 and 76(f). Neither universal survival nor universal displacement of American Hotel is certified.; The public-mirror URL was attempted through the web retrieval tool but was not accessible by that route. The preserved source was fully read locally and its hash, size and page count verified; no successful fresh live-link or signed-original verification is claimed.

The cover abbreviates the appellant as AMERICAN HOTEL & LODGING ASSN. EDU. INS.; the display title expands those abbreviations.

STATUTORY SCOPE

Current statutory equivalence and 2025 Act applicability have not been verified.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive subsequent judicial or statutory audit. The actual bounded New Noble comparison is separately identified below, including its limited overruling, approval-stage accounts ruling and prospective direction. This does not certify every American Hotel proposition as surviving, displaced or current.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 35](#)

SHA-256: a2f799b62963cb56232afd4ca79fd029acbbdeac89aafc93669934b8765a598b

[bounded later comparison judgment - PDF pages: 62](#)

SHA-256: 61a41dc463c2ac016e051a5d48e411ee0bc657d3e9ee92eb7f9e2e00cb362533

[Related note: M/s New Noble Educational Society v. The Chief Commissioner of Income Tax 1 and Anr.](#)

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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