

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI
BEFORE SHRI R. S. SYAL, ACCOUNTANT MEMBER
AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No.-1185/Del/2013
(ASSESSMENT YEAR-2006-07)**

ACIT Circle-2 13-A, Subhash Road Dehradun (APPELLANT)	vs	Pankaj Nagalia Prop. Nagalia Hotels, 13-B, New Survey Road, Dehradun AAVPN2861M (RESPONDENT)
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**I.T.A .No.3634/DEL/13
(ASSESSMENT YEAR-2006-07)**

ACIT Circle-2 13-A, Subhash Road Dehradun (APPELLANT)	vs	Pankaj Nagalia Prop. Nagalia Hotels, 13-B, New Survey Road, Dehradun AAVPN2861M (RESPONDENT)
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Appellant by	Sh.Rajesh Kumar Kedia, JR. DR
Respondent by	Sh.Anil Jain, Adv.

Date of Hearing	30.09.2015
Date of Pronouncement	30.09.2015

ORDER

PER SUCHITRA KAMBLE, JM

**I.T.A .No.-1185/Del/2013
(ASSESSMENT YEAR-2006-07)**

This appeal is filed by the Revenue against the order dated 31/12/2012 passed by CIT(A) I, Dehradun for Assessment Year 2006-07.

2. The Revenue has raised various grounds of appeal therein.

3. The Ld. DR and AR submitted that this appeal becomes infructuous. Under Section 263 of the Income Tax Act, 1961, the Commissioner of Income Tax passed order dated 29.03.2011 setting aside the assessment order dated 16.12.2008. The Commissioner of Income Tax directed the assessing Officer to make the assessment de novo. The said order under Section 263 was challenged by the assessee before the ITAT which was disposed of with certain direction on 20.04.2012. The Revenue went in appeal before the Hon'ble High Court, Uttarakhand and the same was disposed of on 31.12.2012 with direction that the Commissioner (Appeals) shall decide the said appeal. In the meanwhile the fresh Assessment Order dated 30.12.2011 was passed and the same was challenged before the CIT(A) by the Assessee and CIT(A) vide order dated 31.03.2013 allowed the same in favour of the assessee which is under challenge before this Tribunal in ITA NO. 3634/DEL/2013 by the Revenue.

4. In light of the submissions of both the parties, this appeal becomes infructuous.

5. In result, the appeal of the Revenue i.e. ITA No. 1185/DEL/2013 stands dismissed.

I.T.A .No.-3634/DEL/13
(ASSESSMENT YEAR-2006-07)

6. This appeal is filed by the Revenue against the order dated 31/03/2013 passed by CIT(A) I, Dehradun for Assessment Year 2006-07.

7. The ground of appeal raised herein, is as follows:-
- “1. The Ld. CIT(A) has erred in law in allowing assessee deduction u/s. 80IC of the I.T.Act, 1961 as the assessee’s hotel does not fulfill the conditions of ‘eco-tourism’ as laid down in item no. 15 of fourteenth schedule.”*
8. The assessee is proprietor of M/s. Nagalia Hotels (Pacific) at Dehradun and claimed deduction under Section 80IC of the Income Tax Act, 1961 from the Assessment Year 2005-2006 and this is second year for claiming deduction under Section 80IC of the Income Tax Act, 1961. The assessee established a new unit and commenced the operation from 22.05.2004. The assessee declared A.Y. 2005-06 to be his initial assessment year of claiming deduction under Section 80IC of the Income Tax Act, 1961. In this assessment year 2006-2007 he has claimed deduction under Section 80IC of the Act as there was profit from eligible business.
9. The Assessing Officer vide Assessment Order dated 30.12.2011 held in para 5.5 that *“..the assessee have been examined. The assessee has taken eco-friendly measures but the assessee established a hotel which is a stand alone hotel and not parcel of “eco-tourism” activity/ project. Therefore, deduction u/s. 80IC of the I. T. Act, 1961 is not allowed to the assessee.”*
10. The CIT(A) held in para 1.25 of the order as under:
- “1.25 According to my understanding of the ratio of the decisions (supra), deduction should be allowed if the assessee satisfied the following conditions:*
- I. It is a hotel*
 - II. It has a valid license*

III. NOC from the Pollution Control Board has not been denied to it.

Since, the assessee in question fulfills all these conditions, it is held, following the ratio of the decisions of the Hon. ITAT in the cases of Bidhi Chand Singhal and Anchal Hotels (supra) that the assessee should be given the benefit of deduction u/s 80-IC of the I. T. Act.”

11. The DR solely relied upon the Assessing Officer's order in this particular case. The DR further pointed out that the assessee's hotel is situated in the city of Dehradun and even though it uses all the eco-friendly measures, it is not entitled to deduction u/s. 80-IC as it is not a component or part and parcel of 'eco-tourism' activity/project. The DR submitted that the word 'eco-tourism' does not includes hotels. Therefore DR submitted that the order of CIT(A) be set aside and Assessment Order be upheld.
12. The AR submitted that the hotel run by the assessee is coming under the purview of the eco-tourism which includes hotels as per Schedule XIV Part C Sr. No. 15 of the Income Tax Act, 1961 for claiming deduction under Section 80IC (2) (b) (ii). The AR relied upon the orders of the ITAT, Delhi Benches in case of Shri Bidhi Chand Singhal Vs. ITO (ITA No. 3419/Del/2009 dated 4.9.2010) and M/s. Anchal Hotels (P) Ltd. Vs. ACIT (ITA No. 1800 & 1801 (Del)/2010 dated 07.10.2011) wherein it was held that in the absence of the definition of "eco-tourism" the hotel as added into Item No. 15 of Part C is to be construed to be hotel situated in the state of Himachal Pradesh or the State of Uttaranchal having a valid licence on the basis of No Objection from Pollution Department which can be treated to be a hotel eligible for deduction u/s. 80IC as per the provisions of Section 80IC. The assessee pointed out the No Objection Certificate of the Pollution Department which is annexed at page no. 28

of the paper book as well as the Registration certificate for the hotel dated 22.05.2004 which is annexed at page no. 23 of the paper book. Thus the AR submitted that CIT(A) has rightly allowed the deduction under Section 80IC to the assessee.

13. We have gone through the records and perused the arguments of both the counsels. It is clearly mentioned in the Schedule XIV Part C Sr. No. 15 of the Income Tax Act, 1961 that “eco-tourism” includes hotels in the list of articles or things or operations for availing deduction under Section 80IC(2). The same is reiterated in the case laws of Shri Bidhi Chand Singhal Vs. ITO and M/s. Anchal Hotels (P) Ltd. Vs. ACIT. Section 80IC (2) (b) (ii) has been inserted for sole purpose of establishing the eco-tourism industry in relation to the development of the said regions of Himachal Pradesh and Uttaranchal/Uttarakhand. The assessee’s Hotel is falling under the said category and is entitled for the deduction under Section 80IC(2). Thus the CIT(A) has rightly allowed the benefit of the deduction under Section 80IC to the assessee.
14. In result, the Revenue’s appeal is dismissed.

The order is pronounced in the open court on 30th of September, 2015.

Sd/-

(R.S. Syal)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 30/09/2015

*Binita **

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	30.09.2015	PS
2.	Draft placed before author	30.09.2015	PS
3.	Draft proposed & placed before the second member	30.09.2015	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	1 .10.2015	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	.10.2015	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

