

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 3112/Del/2017 : Asstt. Year : 2012-13

ITA No. 3113/Del/2017 : Asstt. Year : 2013-14

Lemon Park Hotel & Spa, Tehri Pulia, Nanital Road, Haldwani	Vs	Income Tax Officer, Ward-1(2), Haldwani
(APPELLANT)		(RESPONDENT)
PAN No. ABHFS5408G		

**Assessee by : Sh. Rahul Khare, Adv. &
Sh. Umashankereseta, CA
Revenue by : Ms. Ashima Neb, Sr. DR**

Date of Hearing : 11.12.2017	Date of Pronouncement : 15.12.2017
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ORDER

These two appeals by the assessee are directed against the separate order each dated 16.02.2017 of Id. CIT(A), Haldwani.

2. Common issue is involved in both these appeals which were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. The common ground raised in these appeals reads as under:

“1. The learned CIT(A) erred in fact and in law in not allowing the deduction u/s 80IC which is not only bad in law but also against the facts and circumstances of the case.”

4. During the course of hearing, the Id. Counsel for the assessee at the very outset stated that an identical issue having similar facts was a

subject matter of the departmental appeal in the case of CIT Vs Aanchal Hotels (P.) Ltd. (2016) 70 Taxmann.com 330 (Uttarakhand) before the Hon'ble High Court of Uttarakhand wherein the issue has been set aside to the AO with certain directions (copy of the said order was furnished which is placed on record).

5. In her rival submissions, the Id. Sr. DR supported the orders of the authorities below but could not controvert the aforesaid contention of the Id. Counsel for the assessee that an identical issue was a subject matter of the departmental appeal in the aforesaid referred to case of CIT Vs Aanchal Hotels (P.) Ltd.

6. After considering the submissions of both the parties and the material on record, it is noticed that a similar issue having identical facts has been adjudicated by the Jurisdictional High Court in the case of CIT Vs Aanchal Hotels (P.) Ltd. (supra) and the matter has been remanded back to the AO for fresh adjudication by giving certain directions. The relevant findings are given in paras 28 to 36 of the order dated 16.06.2016 which read as under:

“28. In this context, we must examine the ideas of Ecotourism as it is understood. We have already adverted to the Government of India's understanding of Ecotourism in relation to the protected areas, in the judgment. We have also referred to some extracts from Wikipedia, which we do note, may be fraught with the danger, which has been pointed out by the Hon'ble Apex Court and which we have already adverted to.

Nonetheless, we could safely refer to the following as it appears to accord with the understanding of the concept by the Government of India.

29. We may also notice that Ecotourism, in fact, is defined in the Geographical Dictionary of Oxford University Press as "Development and management of tourism such that the environment is preserved. The income from tourism adds to the investment into the landscape conservation". In Merriam Webster's Online dictionary, Ecotourism is defined as the practice of touring natural habitats in a manner meant to minimize ecological impact. We also notice that Assessing Officer has referred to the definition given by the State Government in its Ecotourism Planning, Development and Management Document, as "Eco Tourism is responsible to travel to natural areas that conserves the environment and sustains the well being of local people".

30. We remind ourselves that a Court must always guard against an interpretation which will render any part of any provision redundant or superfluous. In regard to the States of Uttarakhand and Himachal Pradesh, we must, therefore, proceed on the basis that the word "Ecotourism", has been carefully and guardedly chosen in contradistinction to the word "tourism". Quite clearly Ecotourism cannot be the same as tourism. Mainstream tourism is certainly a larger concept and it would encompass within itself Ecotourism. The use of the word "Ecotourism" in the context of the States of Himachal Pradesh and Uttarakhand is clearly object driven and contextually apposite for the reason that both the States are hilly States and had and have vast untapped potential for natural and responsible tourism, which can be treated

as Ecotourism. The word "Eco" is defined in Concise Oxford English Dictionary as "representing Ecology". Ecology, in turn, is defined as "the branch of biology concerned with the relations of organisms to one another and to their physical surroundings".

31. We must notice that the State of Uttarakhand is broadly dividable into the hilly areas and the plain areas. Can it not be said that the intention of the law giver was to promote Ecotourism, and towards that end, to encourage the setting up of hotels, spas, amusement parks and sites close to the nature in areas reflecting pristine beauty? Could it have been the intention of the Legislature to provide a right to a hotelier to claim deduction by setting up a hotel in a completely urban area, which is far remote from any signs of ecological beauty and natural surroundings, for which Uttarakhand is justly famous? In this regard, we must address the argument of the learned counsel for the respondent Shri Pulak Raj Mullick, based on the absence of any geographical restrictions in regard to the Thrust Industries. We must notice that it appears to us to be more probable that the intention was to free the Thrust Industries from the geographical restrictions, which were relevant in regard to the industrial units, which are referred to in clause 3.1.(i). In regard to the same, undoubtedly, the geographical restrictions were applicable. In regard to the Thrust Industries when it was said in the Office Memorandum that it will be without geographical restrictions, and subsequently Section 80-IC was inserted, no doubt, without any geographical restrictions, we are left to ponder and answer the question as to whether such restrictions would not inevitably flow from the company the word hotel keeps and the use of the word "including".

32. One way of looking, no doubt, is that any hotel be it a five star hotel, which harnesses the most modern methods, and with little regard for the environment, but boosts tourism, would be entitled to benefit under Section 80-IC. The other way to look at this is that both in terms of site of location, and also for the manner, in which the hotel business is carried out, it should answer the description of a nature-friendly, Eco-friendly hotel. Some of the other criteria, which are relevant would be, whether in the context of its business, it causes no harm or the least harm to its surroundings; whether it provides employment to the local population; whether it develops local culture and arts; does it produce the least impact on environment; whether it resorts to recycling; what steps it takes towards the energy efficiency and water conservation; does it enhance the cultural and economic setup and integrity of local people; does it promote sustainable use of biodiversity and conservation of cultural diversity? In one case, [ITA No. 09 of 2012], in answer to the query, the assessee would write that the hotel is connected to the City sewer system. Solid garbage waste, it is answered, is disposed of in the city garbage container. We have no hesitation in saying that the fact that it is connected to the City sewer system and that the solid garbage waste is disposed of in the city garbage container, can hardly make it a hotel fulfilling the criteria of an Ecotourism hotel, if such a requirement is actually there, which issue we will address.

33. We are of the view that it is not the intention of the Legislature that any person who sets up a hotel within the time limits indicated in the State of Uttarakhand, without any regard to the exact location, and the manner in which it operates, its impact on the nature

(environment), its relationship with the local people (local community), what it does for the people there, indiscriminately, all such hotels should be entitled to claim the benefit. It is true that the word "Ecotourism" includes hotels among other activities. We would think that in the context of this case, we would not be unjustified if we interpret the word "hotel" taking color and assistance from the word "Ecotourism". The word "Ecotourism", it must be noted, appears at the beginning of the provision. Obviously confronted with the obstacle it causes to the acceptance of the respondents argument, Mimansa Principles invoked in the decision of Ispat's case are relied on by Shri Pulak Raj Mullick. We have already extracted the relevant passage. Even applying the Mimansa Principles, we are at a total loss as to how any assistance would be derived from the principles laid down in the Mimansa Principle of Interpretation. The argument appears to be that subordinate accessory must be rendered subservient to the principle. There can be no quarrel with the same but that involves an answer to the question which is the principle. In fact, the acceptance of the assessee's argument would render it necessary for us to delete the word "Eco".

34. We would think that neither the blue pencil theory nor the Mimansa theory can be of any assistance to the assessee. The blue pencil theory is premised on the principle of severance and it is true that it is evolved to separate that which is illegal from that which would pass muster. In such circumstances, it is at the heart of the doctrine of severability. We can have no quarrel with the said principles, but its application to the facts of this case is totally without foundation when the Legislature has deliberately intended Ecotourism to be at the heart of its decision to give a deduction. We are

at a loss as to how it can be itself done away in order to provide for deduction to a hotel, which is merely engaged in tourism and not Ecotourism. In other words, we are of the view that in the setting in which Entry 15 of 14th Schedule appears, it should yield the following result. Only hotels, which were set up as Ecotourism units or having set up as Ecotourism or units, were expanded as such, would be entitled to the benefit of 80-IC. We would think that the soul of the provision is Ecotourism. Various forms, in which Ecotourism may be practised and operated, are enumerated after the general word "Ecotourism". The activities mentioned specifically must share one common feature, i.e., they must be pursued as part of Ecotourism. This in our humble view is the interpretation, which would do justice to the words, the context and object of the statute. Certainly, the mere procurement of a No Objection from the Pollution Control Board cannot be determinative of a question, whether the hotel fulfils the requirement under Section 80-IC of the Act. Maybe, it is not in dispute, in fact, according to Shri Pulak Raj Mullick that for all hotels of a particular type, satisfying a particular requirement, no objection is required from the Pollution Control Board. In this context, we bear in mind the argument of Shri H.M. Bhatia, that Pollution Control Board actually gives no objection consent to operate in the context of air and water Pollution. By no means, can this be the sole determinant of the question, as to whether the hotel is engaged in Ecotourism.

35. Therefore, necessarily the order passed by the Tribunal cannot be sustained. The receipt of the subsidy cannot be a hurdle in our taking the view, which we are taking as we are called upon to decide the actual scope of the provision in this appeal. While we

do not discount the fact that subsidy may have been given the actual interpretation of the provision is a task, which we cannot abdicate.

36. Even regarding the sites of the activities, we would think that it must have something to do with areas close to nature. No doubt, in the State of Uttarakhand, the area of natural beauty and areas close to nature, often overlapped in close proximity with developed areas. These are all matters we would leave to the authority. In view of the same, the order of the tribunal cannot be sustained and the matter must be redone. Accordingly, the impugned orders in all these cases will stand set aside. A request is made by the learned counsel for the assessee that if the matter is set aside and remanded, it be remanded not to the Tribunal but to the Assessing Officer. Learned counsel for the revenue Mr. H.M. Bhatia does not object to this course of action. In such circumstances, in view of the fact that the matter must be redone, we set aside the impugned orders. The matter is remanded back to the Assessing Officer, who will afford opportunity to all the Assesseees and pass fresh orders taking note of the observations, which we have made.”

7. So, respectfully following the ratio laid down by the Honøble Jurisdictional High Court in the aforesaid referred to case, the issue under consideration is set aside to the file of the AO to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard and by considering the directions and guidelines given by the Honøble Jurisdictional High Court.

8. In the result, the appeals of the assessee are allowed for statistical purposes.

(Order Pronounced in the Court on 15/12/2017)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 15/12/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR