

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E" NEW DELHI**

**BEFORE AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

I.T.A. No.3260/DEL/2014  
Assessment Year: 2009-10

ITO, Ward-11(1), Gurgaon.	v.	M/s. Orbit Infrastructure Pvt. Ltd., C/o Bizzotel Hotel, 2390/3 Old Delhi Gurgaon Road, Opp. Dhingra Motors, Gurgaon.
TAN/PAN: AAACO 8256D (Appellant)		(Respondent)

I.T.A. No.5885/DEL/2014  
Assessment Year: 2008-09

DCIT, Circle-2, Gurgaon.	v.	M/s. Orbit Infrastructure Pvt. Ltd., C/o Bizzotel Hotel, 2390/3 Old Delhi Gurgaon Road, Opp. Dhingra Motors, Gurgaon.
TAN/PAN: AAACO 8256D (Appellant)		(Respondent)

Appellant by:	Shri S.R. Senapati, Sr.D.R.		
Respondent by:	S/Shri Rajiv Saxena, Adv., Ajit Kumar Jha, Adv. & Shyam Sunder, AR		
Date of hearing:	28	06	2018
Date of pronouncement:	25	09	2018

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The appeal for the Assessment Year 2009-10 has been filed by the Revenue against impugned order dated

31.03.2014 for the quantum of assessment passed u/s. 143(3) for the Assessment Year 2009-10; and appeal for the Assessment Year 2008-09 has been filed against the impugned order dated 20.08.2014 in relation to the order passed u/s.154, both passed by Id. CIT (Appeals)-II, Faridabad.

2. We will first take up the appeal for the Assessment Year 2009-10, wherein the Revenue has raised the following grounds:-

*“i. Whether on the facts and in the circumstances of the case the Ld. CIT(A) was right in deleting the amount of Rs.5,51,66,956/- on account of disallowance of deduction u/s 80ID since the assessee has incurred Rs.71,21,612/- on civil work during the relevant financial year and also the audit report shows ‘Building under Construction’ in Schedule -5, which reflects that the hotel was not completed during the year under consideration.*

*ii. Whether on the facts and in the circumstances of the case the Ld. CIT(A) was right in accepting the completion certificate issued by Executive Engineer (Building) Municipal Council, Gurgaon whereas the same does not contain any description of building in respect of which it is issued and where the same is located.*

*iii. Whether on the facts and in the circumstances of the case the Ld. CIT(A) was right in accepting the post facto resubmission of Form No. 10CCBBA furnished by the assessee whereas in the original Form No. 10CCBBA, the auditor has failed to fill up vital particulars such as name and address of the hotel, date of commencement of operation by hotel, initial assessment year and particulars of approval from the town planning authority in column- 5,6,7 and 8 respectively.*

*iv. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in accepting the additional evidence under Rule-46A whereas specific discrepancies on which the issue of allowability of deduction u/s 80ID came into doubt have been informed to the assessee and the reply filed alongwith the supporting documents in response to above query by the assessee oil have duly been considered by the AO before passing the assessment order.”*

3. The brief facts qua the issue raised in the grounds of appeal regarding disallowance of deduction u/s.80ID are that, the assessee is engaged in the business running of hotel in the name of 'Bizzotel Hotel' in Gurgaon and has claimed deduction u/s.80ID of Rs.5,51,66,956/- derived from the hotel business. In order to examine the claim of deduction u/s.80ID, ld. Assessing Officer called for the records and in response the assessee had filed following documents:-

- i) Copy of MAP of hotel approved by executive engineer, municipal council, Gurgaon dated 26.03.2007.*
- ii) Copy of completion certificate dated 03.09.2007 issued by XEN/building/Municipal council, Gurgaon.*
- iii) Copy of house tax bills dated 04.10.2007 in the name of assessee.*
- iv) Copy of XEN/Dakshin Haryana Bijli Vitran Nigam (DHBVN) Ltd. Letter dated 18.06.2007 releasing electricity connection for 25000 KW to the assessee.*
- v) Copy of water/service charges bill dated 07.01.2007.*
- vi) Copy of hotel & restaurant approval & classification committee dated 18.09.2007 granting 3-star status to assessee hotel.*
- vii) Form No. 10CCBBA dated 03.09.2009 duly signed by Sh. Ramesh Sardana, C.A. & counsel of assessee.*

4. Learned Assessing Officer after detailed discussion held that assessee is not eligible for deduction u/s.80ID for the reasons that, Assessee has shown '*building under construction*' during the year in 'Schedule 5' of audit report, whereas the hotel building is supposed to be completed by 30.09.2007, i.e., date of completion certificate submitted by the assessee. Total investment in the 'building under construction' as on 01.04.2008 was reflected at Rs.31,10,824/- which as per the Assessing Officer was very unrealistic figure as no 3-star hotel can be completed at such a low-cost of civil construction. He held that the copy of completion certificate dated 03.09.2007 issued by executive Engineer, (building) municipal council, Gurgaon lacks genuineness as the same does not contain any description of building in respect of which it is issued and where the hotel is located, which is the basic and fundamental requirement as per the office procedures. On perusal of the Form No.10CCBBA he noticed that vital particulars in given in column 5 to 8 have not been filled, which is a mandatory requirement as per provisions of section 80ID(3)(iv) of the Act; and accountant was required to fill in correct and complete particulars there and then again at the time of filling of return of income. He held that post facto re-submissions of Form No.10CCBBA by removing the defects /deficiencies detected when pointed out by him does not carry any weight and are liable to be rejected summarily as the complete and full particulars have to be filled in and submitted at the time of filling of Income Tax Return, as

prescribed by Income Tax Act. Accordingly, he disallowed the entire claim made by the assessee.

5. Before the ld. CIT (A) assessee apart from filing of the relevant material and documents placed before the Assessing Officer, also filed additional evidences by way of petition under Rule 46A and pointed out that Assessing Officer had confronted with certain discrepancies to be explained vide order sheet entry dated 30.12.2011, whereas assessment was to be framed on next day i.e. 31.12.2011; and assessee had also objected to inadequate time granted by the Assessing Officer. In this background, assessee prayed that it was prevented by sufficient cause from producing/furnishing the evidences. Ld. CIT (A) sent all the additional evidences to the Assessing Officer for examination. However, the Assessing Officer vide his remand report dated 05.04.2014 has objected for admission of such additional evidences. Ld. CIT (A) then examined the entire assessment records and the order-sheet entries of the assessment proceedings and found that proper opportunity was not given by the Assessing Officer and only a day's time was given to the assessee to respond to the show cause notice and admitted the additional evidences after giving detail reasoning. Further, in the course of appellate proceedings, the assessee while rebutting the arguments and the contentions raised by the Assessing Officer for disallowing the deduction, filed following details and documents before the ld. CIT (A).

*i) "Project approval from Ministry of Tourism" vide letter no. 5-TH-I (62)*

06 dated 01.12.2006.

(ii) Certificate for running of three star Hotel, from "Hotel & restaurant Approval & classification committee". Govt. of India, Department of Tourism.

(iii) Grant of Authorization (EPC GI concessional duty of 5%) for import of items name "services provider" "Hotel & Restaurant from the Joint Director General of Foreign trade, New Delhi India, Ministry of Commerce & Industry (Govt, of India) vide Authorization No. - 0530144188 dated 26.07.2007.

(iv) Electric load sanctioned letter dated 18.06.2007.

(v) Certificate of registration No. R. C. No. L.T/GRW/00028 under section 11(1) of Haryana Tax under Luxuries Act 2007 valid from 07.08.2007.

(vi) Food license from municipality for sales of food and aerated water for serving of foods to room guest w.e.f. 20.06.2007.

(vii) Certificate of registration for running of Hotel & Restaurant from the excise & taxation Authority Gurgaon (Haryana) vide Tin No. 06631930636 valid from 07.12.2006.

(viii) No-objection from the Fire Department dated 09.01.2007.

(ix) Grant of License in form, L-4/L-5 for serving liquor from excise & taxation commissioner alongwith no-objection from the Deputy Commissioner of Police, Gurgaon.

(x) Water & sewerage charges bill dated 27.01.2007 from Haryana Public health Department, Gurgaon.

(xi) House Tax Receipt from Municipal Corporation of Haryana.

(xii) No objection certificate from civil surgeon from Gurgaon, Haryana.

5.1 Apart from that point-wise rebuttal was also made which has been elaborately discussed by the ld. CIT (A) in his impugned order.

6. After considering the entire facts and material on record, the Id. CIT (A) has given his finding with regard to the various discrepancies pointed out by the Assessing Officer and held that assessee was eligible for deduction u/s.80ID. In sums and substance, the finding of the Id. CIT (A) were as under:-

- a) As regards AO's observation that the appellant had spent unrealistically low amount of construction of hotel, the learned counsel of the appellant submitted that instead of buying a plot of land, it had bought covered area measuring 18500 sq.ft. and it was because of the availability of covered area that nominal expenses were made on civil work. While submitting that only an amount of Rs.71,21,612/- was spent on civil works on the aforesaid building, the appellant hastened to add that it incurred additional amount of Rs.1,19,89,188/- till 31.03.2008 and Rs.1,93,70,992/- till 31.03.2009 towards other amenities required for the business of hotel, namely, furniture, fixtures, lift, telephone, fire-extinguishers, televisions, fitness machines etc. In support of its submissions, the appellant also produced a copy of sale deed as per which it had acquired a covered area measuring 18500 sq. ft. on which further additional construction was made resulting in the setting up of the hotel.
- (b) As regards AO's observation that the building had been shown to be under construction, the appellant submitted that it was a technical and inadvertent omission by the Auditor and went on to add that a mere narration 'Building under Construction' would not lead to the conclusion that construction was not complete. In order to corroborate the fact that the hotel had already been constructed and was functioning during the year under consideration, the appellant drew the attention of the undersigned to the fact that it had deposited taxes to the tune of Rs.26,48,721/- pertaining to

financial year 2007-08 and Rs 71,72,194/- for the financial year 2008-09 with the Excise and Taxation Department as Luxury Tax.

- c) Furthermore, the appellant added that as prescribed by Govt, of India for "National Security Reasons", every Hotelier has to submit the complete particulars of the foreigner guest in "Form C" (Hotel arrival report) under Rule 14 for Registration of foreigners Rules (1939) giving complete particulars of guest (Foreigner) in the prescribed form alongwith the passport number. The appellant submitted copy of "Form C" pertaining to a guest in the hotel (Shri Dewatre Charles), a Foreigner, which was submitted with concerned department on 21.09.2007. This shows that Mr. Charles stayed in the hotel in September 2007. Similarly, the appellant stated that six foreigners booked the Hotel on 20.09.2007. A copy of six "Form C"s duly completed giving passport number of each & every foreigner submitted with the concerned department on 22.09.2007 was also given during appellate proceedings. On the basis of this concrete evidence the appellant substantiated the fact that the hotel was functioning even before the start of the year.
- d) The appellant also gave a list of reputed companies whose guests stayed in the hotel during the year under consideration as well as the preceding year. In order to corroborate its statement, the appellant gave details of payment made to one of its reputed clients, namely Maruti Suzuki India Ltd duly confirmed by the company concerned. A number of invoices in the said details relate to the year under consideration. This evidence further cements the fact that during the year in question, the hotel was very much functioning.
- e) As regards, AO's observation that the completion certificate

issued by Executive Engineer (Building) Municipal Council, Gurgaon lacked genuineness, the appellant pointed out that the said certificate clearly mentioned the location of the hotel as per which it was located at Delhi Road in the City of Gurgaon. Since the location of the Hotel was specified in the Completion Certificate issued by the Executive Engineer (Building), Municipal Council, Gurgaon, the appellant stressed the fact that no adverse inference could be derived by the AO on the basis of this Certificate.

- (f) As regards defects in Form 10CCBBA pointed out by the AO as one of the grounds for disallowance of deduction u/s 80ID of the Income Tax Act, the appellant submitted that there were some defects, which were removed as soon as the appellant came to know about it from the AO. This fact gets corroborated by the order-sheet entries appearing in the assessment record. As per the order sheet entries, the AO pointed out certain deficiencies in Form 10CCBBA to the learned counsel of the appellant on 29.12.2011, which were removed and a fresh form 10CCBBA was furnished by the appellant. The same has been duly acknowledged in the order-sheet entry dated 30.12.2011. Though the assessment order was passed on the same date i.e. on 30.12.2011, the order-sheet entry on 30.12.2011 makes it evident that the fresh Form 10CCBBA was received by the AO before passing the assessment order. The appellant while submitting that the fresh form 10CCBBA was filed during the course of assessment proceedings, also relied upon a number of judicial pronouncements as per which deduction u/s 80HHC/80IA could not be denied on mere ground of certain deficiencies in the said form. In the case of **ITO Vs Novelty Garments (2007) 256 ITR 688 (Rajasthan)**, it was held that the submissions of Auditor's Report for the purpose of

deduction of 80HHC of the Income Tax Act in the old format of Form No. 10CCAC in place of new format is a defect, which can be corrected by filing the auditor's report in the revised format during the course of assessment proceedings.

6.1 Apart from that, he had also given his finding on the additional evidence like; i) copy of 'Form-C' pertaining to Shri Dewatre Charles which was submitted with the concerned Department on 21.09.2007; ii) Passport No. and other details of six foreigners, who stayed in Hotel and whose particulars were submitted with the concerned Department of the Government on 20.09.2007; iii) a certificate issued by one of the assessee's client, namely, Maruti Suzuki India Ltd. giving details of payment made by it to the assessee company and all these payments were made in relation to the guests of Maruti Suzuki India Ltd., who stayed in the Hotel; iv) the invoice date given in the said Certificate, which makes it abundantly clear that a number of clients of Maruti Suzuki India Ltd. who stayed in the Hotel during the year under consideration; v) proof that the Company had paid luxury tax of Rs.26,48,721/- for the year ending 31.03.2008 and Rs.71,72,194/- for the year ending 31.03.2009; vi) electrical load sanctioning letter dated 18.06.2007; vii) letter from Civil Surgeon, Gurgaon to assessee-company dated 24.10.2007, giving 'No Objection' for establishing kitchen under rules and conditions specified by him; viii) House Tax Receipt from Municipal Corporation of Haryana dated 09.10.2007; ix) no Objection Certificate from Haryana Fire Service dated 09.01.2007; and x) the assessee also gave copies of Renewal

Certificates wherever the initial Certificate, issued for a fixed period of time, had expired. He thus, held that once the guests were in hotel and the assessee has earned receipts from the hotel business, then that means not only it was functional but also the entire receipts were from the business and accordingly he allowed the claim of the assessee.

7. Before us, learned Department Representative submitted that the Assessing Officer has pointed out certain discrepancies with regard to the allowability of deduction u/s.80ID. Though, the same were confronted on 29.12.2011, but assessee had filed all the documents which Assessing Officer has duly considered while passing the assessment order and therefore, it is incorrect to hold that additional evidences should be admitted. Apart from that, there no substantial amount spent by the assessee on the building but on other amenities during the Assessment Year which puts a question mark on the complete functioning of the hotel. Even the auditors have mentioned that building was under consideration and ld. CIT (A) has erred in accepting the revised form 10CCBBA. Thus, order of the Assessing Officer should be upheld.

8. On the other hand, learned counsel has strongly relied upon the order of the ld. CIT (A) and submitted that not only the hotel was functional but all the requisite approvals for the operation of the hotels were submitted which were issued prior to the Assessment Year 2008-09. Once, the assessee had shown huge amounts spent on amenities for running of

the hotels and also furnished the receipts from the earning of the hotels, then it cannot be said that hotel was not in operation. Assessee has no other source of income or any other business and if the income which has been shown is purely from the hotel only, then such an income derived from the hotel business is eligible for deduction u/s.80ID and same cannot be taxed. He further pointed out that even the Assessing Officer has not treated the said income under the head 'income from other sources' and once it is a business income then ostensibly such a business income derived from the hotel is eligible for deduction u/s.80ID. He also pointed out to various documents (paper book) filed before us, which were also filed before the Assessing Officer as well as Id. CIT (A).

9. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as matter referred to before us. The main reason for denial of deduction by the Assessing Officer u/s.80ID is that, assessee was not in a position to operate the hotel as it was still under construction. The reason for coming to this conclusion was that; *firstly*, in the audit report in Schedule-5 Auditors have shown 'building construction' and 'investment under construction' as on 01.04.2008 at Rs.31,10,824/- which is too low; and *secondly*, the completion certificate dated 03.09.2007 issued by Executive Engineering Municipal Council, Gurgaon lacks genuineness. Before the Id. CIT (A), the assessee has submitted various details and documents

which have been incorporated above in the form of approvals from various departments including ministry of tourism certificate for running the 3 Star Hotels and other licenses and 'No Objection Certificates' required from various department. Apart from that, assessee has also filed additional evidences which too have been incorporated above and also the details of the guests who stayed in the hotels and the payments received through cheques. The assessee had also paid various taxes levied on the bills raised to the guests who were mainly the guests of Maruti Suzuki India Ltd. From the perusal of the record, it is seen that assessee has disclosed the cost of the land at Rs.1,18,69,000/- in its balance sheet as on 31.03.2006 and thereafter, various additions/construction expenses have been capitalized which aggregated to more than Rs.71 lacs. Further, the assessee had also spent on civil work for sums aggregating to Rs.1,19,89,188/- till 31<sup>st</sup> March, 2008; and again Rs.1,93,70,992/- till 31<sup>st</sup> March, 2009 under the head 'amenities' required for hotel like furniture and fixtures, lift, telephone, generator, fire-extinguishers, kitchen equipments and catena of other amenities required in the hotel rooms and hotel business. The hotel is not merely a building but also has to provide various amenities to the guests for which assessee had given the details not only in the balance sheet but also before the authorities below. The assessee has also adduced certain evidences to prove that the hotel was fully operational and functional and that the assessee had even deposited

applicable taxes, like luxury taxes etc., to the tune of Rs.48 lac pertaining to the Assessment Year 2007-08 and to the Excise and Taxation Department. It has also shown the receipts in the Assessment Year 2008-09 at Rs.2,86,65,924/- and receipts of Rs.7,47,49,703/- during the Assessment Year 2009-10 and has also furnished the list and the name of the customers who were stayed with the assessee from whom it has earned revenue/receipts. The details of which are as under:

F. Year 2007-08 (A/Y 2008-09)		F. Year 2007-08 (A/Y 2008-09)	
Names of the co.	Amount (Rs.)	Name of the co.	Amount (Rs.)
Maruti Suzuki India Ltd.	44,00,890.00	Suzuki Power-train India Ltd.	1,65,40,246.00
Suzuki Powertrain India Ltd.	34,49,610.00	Maruti Suzuki India Ltd.	69,15,662.00
Koni Travels India Ltd.	2,29,160.00	Sojit India Limited	28,12,138.00
Phoenix India Limited	2,15,919.00	Teneco RC India Ltd.	1,07,870.00
Sona Koyo Stearing System Ltd.	2,46,354.00	Wave Engineering & Design Ltd.	1,00,694.00
Ageies BPO Services Ltd.	15,903.00	Sri Ranbaxy Ltd.	1,95,971.00
Amtek Auto Ltd.	48,400.00	Suzuki Motorcycle India Pvt. Ltd.	71,796.00
Havell's India Ltd.	49,000.00	Hero Honda Motors Ltd.	76,162.00
Sygenta India Ltd.	86,382.00	Orient Craft Pvt. Ltd.	19,146.00
Ucla Fuel System Ltd.	51,9880.00	Kingfisher Airlines Ltd.	35,000.00
Total	87,93,606.00	Total	2,68,74,685.00

10. Once the assessee has disclosed such a huge amount of receipts from hotel business and there is no other material on record before the Department to hold that the assessee had some other business or sources of income, then it has to be reckoned that receipts are purely from the hotel business and if that is so, then assessee is eligible for deduction u/s.80ID. Even the learned Assessing Officer while denying the claim of deduction u/s.80ID has taxed the income as business income and not as income from other sources. If it is a business income derived from hotel business, then we do not find any reason as to why such a claim for deduction should be denied. In so far as the objection by the ld. DR for admission of additional evidences, the same are not tenable, because firstly, admittedly the Assessing Officer had raised the query a day before the completion of assessment and whatever material assessee could provide was given and further evidences have been filed before the ld. CIT (A) to prove the functioning and operation of the hotel. Ld. CIT (A) had sent the entire additional evidences to the Assessing Officer for proper examination. However, the Assessing Officer instead of examining the same has objected for such an admission without any cogent grounds. Ld. CIT (A) has given a very detailed finding not only for the admissibility of such evidence but also how they are relevant for deciding the issue in hand.

11. The finding of the ld. CIT (A) is not only based on correct appreciation of fact but also in accordance with law. Thus, we do not find any reason to deviate from such a

finding and accordingly, the order of the ld. CIT (A) is affirmed and consequentially the grounds raised by the Revenue are dismissed.

12. Now coming to the appeal for the Assessment Year 2008-09, the main issue involved is that, Assessing Officer has rejected the claim of deduction u/s.80ID amounting to Rs.1,45,04,850/- on the ground that same was not being claimed in the original return of income but only by way of revised return of income. The assessee had filed an application u/s.154 before the Assessing Officer claiming the deduction u/s.80ID on the ground that assessee had filed the revised return dated 31.01.2009 in which such a claim was made, and therefore, assessee should be allowed such a claim. The Assessing Officer held that the income tax return downloaded from the system reveals that the claim of deduction u/s.80ID was not made and similar claim has been rejected in the assessment proceedings for the Assessment Year 2009-10 also.

13. The facts in brief and background are that assessee had filed its original return of income on 30.09.2008 showing gross total income of Rs.1,45,04,849/- as per e-filing acknowledgement no.46088290300908/-. Though, it has been stated by the assessee that the entire amount of gross total income was claimed as deduction under Chapter-VI A. However, ld. CIT(A) has noted that the assessment folder did not reveal such return, but at the same time it is an

undisputed fact that assessee had filed revised return of income on 31.03.2009 declaring gross total income of Rs.2,28,98,593/- which was available in the assessment folder with e-filing acknowledgement no.67426740310309. Ld. CIT (A) has noted these important facts in the impugned order which for the sake of appreciation is reproduced hereunder:

*The facts are that the appellant filed its original return of income on 30.09.2008 showing a gross total income of Rs.1,45,04,849/-. The e-filing Acknowledgement No., as per a copy of the return filed by the appellant was 46088290300908. In the said return, the entire amount of gross total income was claimed as a deduction under Chapter VIA of the Income Tax Act. In order to verify the fact of filing of return by the appellant on 30.09.2008 and claiming the aforesaid deduction, the assessment folder was perused. In the assessment folder, the said return is not available. However, revised return filed by the appellant on 31-03-2009, declaring a gross total income of Rs.2,28,96,593/- is available in the assessment folder. The e-filing acknowledgement No. of that return is 67426740310309. No deduction u/s 80ID of the Act has been claimed in that return. However, the appellant gave a copy of return with the same e-filing Acknowledgement No. as per which deduction under Chapter VIA amounting to Rs. 2,28,96,593/- was claimed. The appellant submitted that subsequent to filing this return, it revised its returns twice on 31.03.2009 bearing acknowledgement No. 67607880310309 and 67725160310309. Both these returns filed subsequent to the return available with the AO, show a claim under Chapter VIA amounting to Rs.2,28,96,593/- resulting in NIL total income for the appellant. The only distinction between these two returns is that in the latest return filed by the appellant on 31.03.2009 bearing acknowledgement No. 677251603100309, the appellant claimed the deduction under*

*Section 80ID of the Income Tax Act. In this return, the entire amount of gross total income was claimed as a deduction, resulting in NIL taxable income for the year under consideration.”*

13.1 In support of its claim, the assessee also gave a copy of Form No.10CCBBA as per which the appellant was entitled to a deduction u/s 80ID of the Act amounting to Rs. 2,28,96,593/-. He held that the Assessing Officer has completely ignored the latest return filed by the assessee and has denied the claim of deduction simply on the ground that no such claim has been made in the original return of income. However, considering the submission and facts and material on record, the Id. CIT (A) has noted the following facts emerging from the records:-

*“1. The appellant filed its original return of income on 30.09.2008 claiming a deduction of Rs. 1,45,04,849/- under Chapter VIA of the Income Tax Act. Subsequently, by filing revised returns, the appellant claimed the enhanced amount of Rs.2,28,96,593/- as a deduction. As per the copy of the latest return filed by the appellant on 31.03.2009 (E filing Acknowledgement No. 677251603100309), a deduction of Rs.2,28,96,593/- was claimed u/s 80ID of the Income Tax Act.*

*II. The AO, on the other hand, did not allow the claim of Section 80ID on the ground that the appellant had not claimed the aforesaid deduction.*

*III. A perusal of the order u/s 154 of the Income Tax Act reveals that the AO rejected appellant's claim for deduction u/s 80ID amounting to Rs. 1,45,04,849/-. However, on a perusal of the assessment folder, a copy of the said return filed on 30.09.2008 could not be found.*

IV. *The only evidence available in the assessment folder is the return of income filed by the appellant on 31.03.2009 bearing E-filing Acknowledgement No.67426740310309. As per this return available in the assessment folder, the appellant had not claimed deduction u/s 80ID of the Income Tax Act. When confronted with these facts, the appellant gave a copy of the return bearing the same e-filing acknowledgement No. in which it had claimed a deduction u/s 80ID of the Income Tax Act amounting to Rs.2,28,96,593/-. This leads to emergence of a strange situation, since as per the Departmental records, the claim was not made by the appellant whereas as per the certified copy of the return e-filed by the appellant and bearing the same Acknowledgement No. deduction under Chapter VI A amounting to Rs.2,28,96,593/- was claimed.*

V. *The issue is clinched by the fact that subsequent to the filing of the first revised return on 31.03.2009( a copy of which is available in the assessment records), the appellant revised its return twice on the same day as per which claim of Rs.2,28,96,593/- was made u/s 80ID of the Act. The AO while disposing of appellant's application u/s 154 of the Act did not give due cognizance to the fact that the appellant had filed its final revised return on 31.03.2009 claiming a deduction u/s 80ID of the Act amounting to Rs.2,28,96,593/-*

13.2 After noting these facts, he held that Assessing Officer has erred in not appreciating the entire facts before denying the claim of deduction u/s.80ID. He also held that in any case such a claim can always be entertained by the appellate authorities, in view of the judgment of Hon'ble Supreme Court in the case of Goetz India Ltd. vs. CIT, reported in (2006) 284 ITR 323 (SC).

14. During the course of hearing, we asked the ld. DR to file a paper book based on assessment records which has

been filed before us. From the perusal of the same, we find that there is an income tax return dated 31.03.2009 vide e-filing acknowledgement no. 67426740310309 wherein assessee has claimed deduction under Chapter-VIA amounting to Rs.2,28,96,593/-. Original return of income has also been filed before us. Once it is an undisputed fact that revised return has been filed and claim has been made by the assessee, then such a claim has to be entertained by the Assessing Officer and this fact has been duly appreciated by the ld. CIT (A) as incorporated above. Apart from that, on merits also assessee is eligible for deduction u/s.80ID which we have already discussed in detail while deciding the appeal for the Assessment Year 2009-10. Thus, we do not find any infirmity in the order of the ld. CIT (A). Accordingly, the appeal of the Revenue is dismissed.

15. In the result, both the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 25<sup>th</sup> September, 2018.**

Sd/-  
**[L.P. SAHU]**  
**ACCOUNTANT MEMBER**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 25<sup>th</sup> September, 2018

PKK: