

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA Nos. 305 & 306/DEL/2018
[Assessment Years: 2012-13 & 2013-14]

Shri Rakesh Negi
Lane C - 22, Turner Road
Clement Town, Dehradun

Vs.

The I.T.O,
Ward - 2(3)
Dehradun

PAN: ADFPN 2121 F

[Appellant]

[Respondent]

Date of Hearing : 27.09.2018
Date of Pronouncement : 08.10.2018

Assessee by : Shri Girish K. Shukla, Advocate
Revenue by : Shri Surendra Pal, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

These two appeals by the assessee are preferred against the two separate orders of the Commissioner of Income Tax [Appeals], Dehradun dated 27.09.2017 pertaining to assessment years 2012-13 & 2013-14. Since common issues are involved in both these appeals, they were heard together and are being disposed off by this common order for the sake of convenience and brevity.

2. The common grievance of the assessee in both these appeals relates to the disallowance of claim of deduction u/s 80IC of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

3. Briefly stated, the facts of the case are that the assessee is engaged in hotel business. For the years under consideration, the assessee has claimed deduction u/s 80IC of the Act. When the return was selected for scrutiny assessment, the assessee withdrew the claim of deduction u/s 80IC of the Act. The Assessing Officer, accordingly, framed the assessment order.

4. When the matter was agitated before the CIT(A), the Hon'ble Uttarakhand High Court in the case of Aanchal Hotels Pvt. Ltd 2016-TIOL-1912 decided that a hotel set up in the State of Himachal Pradesh or the State of Uttaranchal and having a valid NOC from the Pollution Control could be said to be eligible for deduction u/s 80IC of the Act.

5. Drawing support from the judgment of the Hon'ble Uttarakhand High Court, the assessee claimed deduction u/s 80IC of the Act once again before the CIT(A).

6. The CIT(A) considered the claim of deduction u/s 80IC of the Act, gathered certain information regarding the hotel of the assessee and decided the issue against the assessee.

7. Before me, the ld. AR vehemently stated that the CIT(A) has drawn adverse view without confronting to the assessee the information gathered by him and hence the action of the CIT(A) is in violation of principles of natural justice.

8. The ld. DR strongly supported the findings of the CIT(A).

9. I have carefully perused the orders of the authorities below. It is true that during the assessment proceedings, the assessee withdrew the claim of deduction u/s 80IC of the Act. It is equally true that subsequently, by the judgment of the Hon'ble Uttarakhand High Court ,

the assessee could be eligible for claim of deduction u/s 80IC of the Act. When this claim was made before the CIT(A), the CIT(A) did make some enquiry behind the back of the assessee and decided the issue against the assessee.

10. In my considered opinion, the CIT(A) ought to have confronted the result of the enquiries made by him and should have given reasonable opportunity to the assessee to explain his case. I am of the view that the matter deserves to be set aside to the file of the CIT(A). I order accordingly and direct the CIT(A) to decide the issue afresh after giving reasonable and sufficient opportunity of being heard to the assessee.

11. In the result, both the appeals filed by the assessee in ITA Nos. 305 & 306/DEL/2018 are allowed for statistical purposes.

The order is pronounced in the open court on 08.10.2018.

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 08th October, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
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Date on which the file goes to the Head Clerk	
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