

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 3214/Ahd/2015

(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT, Circle-3(1)(2) Ahmedabad	बनाम/ Vs.	M//s Raysons Residency Pvt. Ltd. 15, National Plaza C.G. Road, Ahmedabad - 380009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAE CR1 565 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	O.P. Sharma, CIT DR
प्रत्यर्थी की ओर से / Respondent by :	S.N. Soparkar, Advocate

सुनवाई की तारीख / Date of Hearing	18/02/2019
घोषणा की तारीख /Date of Pronouncement	28/02/2019

आदेश/ORDER

PER MAHAVIR PRASAD - JM:

This appeal has been preferred by the Revenue against the order of Ld. CIT(A) dated 24/08/2015 arising from assessment order dated 10/02/2015. Revenue has taken following ground that the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 6,26,69,610/- made 35AD(5)(aa) of the Act. The Ld. CIT(A) has erred in law and on facts by not appreciating the facts that the Indian Tourism, Ministry of Tourism, Govt. of India had given

approval with the condition that the assessee should apply separately to avail the concession under the Act, however the assessee failed to apply separately for the purpose of deduction under the Act. Fact emanates from assessment order.

“(1)That assessee had made application to India Tourism Mumbai with a fees of Rs. 8,000/- by Demand Draft. India Tourism, Mumbai, a part of Ministry of Tourism, Govt. of India vide its letter No. ITM(750)(1111)/2010 dated 02/08/2010 had submitted that the demand draft submitted by the assessee of Rs. 8,000/- is returned for necessary amendment as same was payable at New Delhi, instead of Mumbai.

- (2) Check list of facilities and services were not submitted.*
- (3) Copy of land used/commencing service is not certified.*

(4) In its para-2 of letter No. ITM(750)(AP)(723)/2010 dated 30/08/2010 addressed to the assessee, India Tourism had clarified that though permission for 3 star hotel is granted, the approval does not constitute an approval for fiscal concession under the Income Tax Act. For fiscal concession, if any, under the I.T. Act separate and specific approval is to be sought and applied for after hotel starts functioning. Relevant portion of the same is as under:-

“2. This approval does not constitute approval under the Income Tax Act, 1961. For fiscal concessions, if any, under the Income Tax Act, separate and specific approval will have to be sought and applied for after the hotel starts functioning.

”Further in para-3, it was mentioned that the benefit under the specified section of I.T. Act will approve from the date on which the Hotel approved at the project stage starts functioning subject to hotel expressing its intention to department to avail the same in writing. Relevant portion of the same is reproduced as under:-

“It may be noted that the benefits under the specified sanctions of the Income Tax Act, if any, will accrue from the date on which the hotel approved at the project stage starts functioning subject to the hotel expressing its intention to the Department of Tourism, Govt. of India, C-1 Hutments, Dalhousie Road, New Delhi 110011 to avail the same in writing.”

Further, the assessee had not furnished following licenses:-

- 1. Completion Certificate*
- 2. Occupation Certificate*
- 3. Treated Potable Water License*
- 4. Weights and Measures Certificate*

5. *Hygiene and Sanitary Certificate*
6. *Sewage License*
7. *Structural Safety Certificate*

In view of above, it is clear that the Indian Tourism, the Ministry of Tourism, Govt. of India had given its approval with the condition that the assessee should apply separately to avail the concession under Income Tax Act. The assessee had not applied separately nor furnished any evidence from which it can be established that a separate application is being made by the assessee to avail the concession under the I.T. Act. Further the assessee had not obtained all kind of licenses which are necessary for running of any hotel business. Therefore, it is very much clear that the assessee had not fulfilled all conditions which were specified to avail deduction u/s. 35AD of the I.T. Act and finally made disallowance of Rs. 6,26,69,610/-."

2. Thereafter against the disallowance of Rs. 6,26,69,610/- made under section 35AD(5)(aa) of the Act assessee preferred first statutory appeal before the Ld. CIT(A) who allowed the appeal of the assessee on the ground that no specific permission is laid down in section 35AD and/or relevant income tax rules the action of AO seems to be unjustified in denying deduction under section 35AD and held that assessee had completed necessary formalities in terms of obtaining licenses from different authorities were obtained by the assessee.

3. Now Revenue has come before us against the order of the Ld. CIT(A), we have gone through the relevant record and amount the question before us is whether assessee is entitled for deduction under section 35AD(5)(aa) of the Act or not and in order to avail the benefits of sec. 35AD(5)(aa) of the Act assessee has to fulfill the conditions being expenditure incurred prior to commencement of its

operation and the amount is capitalize in the books of accounts of the assessee on the operation. As per provisions of section, any capital expenditure incurred by the assessee prior to commencement of operation of the new unit shall be allowed as deduction in the previous year in which the assessee commences the operation of hotel business. Sec. 35AD(5)(aa) is regarding deduction in respect of expenditure on specified business:- “on or after 1st day of April, 2010, where the specified business is in the nature of building and operating a new hotel of Two Star or above category as classified by the Central Government.” In respect of its contention assessee submitted copy of permission granted by the Ministry of Tourism letter dated 30/08/2010 wherein approval of three star hotel has been granted by the Ministry and assessee has filed Building House Permission issued by the municipal authority dated 18/10/2011 for granting the permission of hotel and assessee submitted details with the AO for following documents along with copies of assessee submitted letter dated 09/02/2015 along with following documents copy of:

- “1. Eating house license
2. License for keeping of lodging house
3. Professional tax registration certificate
4. B.U. permission
5. Permit order under Gujarat tax on luxuries
6. Consent to operate (Pollution control)
7. Kitchen waste removal agreement
8. Lift license
9. License under food safety and standard Act, 2006
10. Certificate for fire safety measure
11. Checklist and details submitted with Tourism Department

12. Approval of proposed three star hotel project”
4. The CIT(A) in our view, has rightly come to the conclusion in favour of the assessee. Thus we dismiss the appeal of the Revenue.
5. In the result, appeal filed by the Revenue is dismissed.

This Order pronounced in Open Court on 28/02/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Ahmedabad: Dated 28/02/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

TANMAY

True Copy

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।