

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.2336/Del/2018  
Assessment Year: 2014-15

Lemon Park Hotel & Spa,  
Tehri Pulia,  
Nainital Road,  
Haldwani,  
Uttarakhand.

Vs. ITO,  
Ward-1(2),  
Haldwani.

PAN: ABHFS5408G

(Appellant)

(Respondent)

Assessee by	:	Shri Rahul Khare, CA
Revenue by	:	Shri Amit Jain, Sr.DR
Date of Hearing	:	11.03.2019
Date of Pronouncement	:	11.03.2019

ORDER

This appeal by the assessee is directed against the order dated 28<sup>th</sup> November, 2017 of the CIT(A), Haldwani, relating to Assessment Year 2014-15.

2. The grounds of appeal raised by the assessee are 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.

2. The learned CIT(A) erred in fact and in law in confirming the addition of Rs.74,900 on account of interest which is not only bad in law but also against the facts and circumstances of the case.”

3. The facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of running a hotel under the name and style of M/s Lemon Park Hotel & Spa, Tehri Pulia, Nainital Road, Haldwani. It filed its return of income on 02.11.2015 declaring nil income. The Assessing Officer during the course of assessment proceedings observed that the assessee has disclosed total receipts from hotel business at Rs.99,56,054/- and declared net profit at Rs.22,68,266/- on which deduction u/s 80IC or 80IE of the IT Act, 1961 has been claimed. The Assessing Officer confronted the assessee regarding such claim u/s 80IC. Rejecting the various explanations given by the assessee and relying on various decisions, the Assessing Officer disallowed the claim of deduction u/s 80IC of Rs.22,68,266/-. The Assessing Officer similarly noted that the assessee has given a loan of Rs.5,35,000/- to Shri Mudit Bansal for non-business purpose and no interest has been charged on such loan. Rejecting various explanations given by the assessee and relying on various decisions, the Assessing Officer made an addition of Rs.74,900/- to the total income of the assessee being notional interest @ 14% being the interest on such interest free advances.

4. In appeal, the Id.CIT(A), following his order for assessment year 2013-14, upheld the disallowance made by the Assessing Officer. So far as the addition on account of notional interest of Rs.74,900/- is concerned, he also sustained the addition made by the Assessing Officer.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The ld. counsel, at the outset, submitted that the issue relating to deduction u/s 80IC has been restored to the file of the Assessing Officer by the order of the Tribunal for assessment year 2012-13 and 2013-14 in ITA No.3112/Del/2017 & 3113/Del/2017, order dated 15<sup>th</sup> December, 2017. Therefore, he has no objection if the matter is restored to the file of the Assessing Officer in the light of the direction of the Tribunal for the preceding two assessment years. So far as the disallowance of interest is concerned, no argument was advanced before the Tribunal by the ld. counsel for the assessee. Since the Tribunal in the preceding two assessment years has restored the issue of deduction u/s 80IC to the file of the Assessing Officer and since the ld. CIT(A) while rejecting the claim of deduction u/s 80IC has followed his order for the preceding assessment year, therefore, considering the totality of the facts and in the interest of justice, I deem it proper to restore the issue of deduction u/s 80IC back to the file of the Assessing Officer for deciding the issue afresh in the light of the directions of the Tribunal for the preceding two assessment years. Needless to say, the Assessing Officer shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The ground raised by the assessee is accordingly, allowed for statistical purposes.

7. So far as the second ground is concerned, as mentioned earlier, the Id. counsel for the assessee did not make any submission considering the smallness of the amount.

I, therefore, dismiss the second ground as not pressed.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

The decision was pronounced in the open court at the time of hearing itself on 11.03.2019.

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMFBER

Dated: 11<sup>th</sup> March, 2019

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi