

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 4098/Del/2018
Asstt. Year: 2013-14

Hotel Doons Castle, Verendra Kalra & Co., CAs, 75/7, Rajpur Road, Dehradun Uttarakhand Pin 248001 PAN AAFH0529N	Vs.	ITO, Ward -1(3) Dehradun
(Appellant)		(Respondent)

Assessee by:	Shri Somil Aggarwal, Adv.
Assessee by :	Shri S.L. Anuragi, Sr. DR
Date of Hearing	30/01/2019
Date of pronouncement	26/04/2019

ORDER

The aforesaid appeal has been filed by the assessee against impugned order dated 17.5.2018, passed by Ld. CIT(Appeals) Dehradun for the quantum of assessment passed u/s 143(3) for the assessment year 2013-14. In the grounds of appeal assessee has challenged disallowance of claim u/s 80IC of Rs. 17,38,174/-.

2. The facts in brief are that assessee firm is engaged in the business of running of hotel in the name and style of, M/s. Hotel Doon Castle at Dehradun. The income from such hotel business was claimed as deduction u/s 80IC, amounting to Rs. 17,38,174/- in the return of income filed on 30.9.2013. In the course of the assessment proceedings in response to the show cause notice assessee filed a

detailed write-up in support of the claim of deduction u/s 80IC and submitted that if the hotel business is set up in certain special category states then deduction has to be allowed and here in this case state of Uttaranchal was added in such special category notification dated 10.3.2006. It was further submitted that the assessee's hotel called within the definition of eco-tourism unit in the following manner:-

- a) *“Contributing actively to the conservation of natural and cultural heritage,*
- b) *Interpreting the natural and cultural heritage of the destination to the visitors,*
- c) *Going 'green' by controlling its trash, keeping chemicals out of earth and water by using all the treated water for landscaping purposes,*
- d) *Reducing its energy use through use of CFL bulbs,*
- e) *Preserving its environment by disposing all the sewage through septic tanks and soak pits,*
- f) *Disposing all the non-degradable litter such as empty bottles, tins, cans etc in municipal dustbins and not burying it and littering the environment;*
- g) *Preserving the cleanliness of the hotel and the overall environment;*
- h) *Cutting noise pollution by keeping the amount of noise generated from the operation of equipments well within the norms;*
- l) *Not using wood or any hazardous chemicals to cook food. The unit uses LPG for cooking and the same is stored in safe godowns provided with proper ventilation;*
- j) *Not using polythene bags that are non biodegradable and unhealthy for the environment.”*

3. Ld. AO after detailed discussion has denied the deduction u/s 80IC after giving detailed reasons. In sums and substance the AO's contention has been that, firstly, the assessee was running a conventional commercial hotel at market place at Dehradun and it is not located in any natural habitat encouraging preservation of wild life and natural habitat. Secondly, assessee's hotel is not catering to the needs of the tourists in the protected area and eco tourism hotel is different from a hotel adopting eco friendly measures. Adoption of such measures would not convert a commercial hotel into an eco tourism hotel. It remains a commercial hotel regardless of the eco friendly or environment friendly measures adopted by the assessee. Thirdly, Industrial policy of 2003 of Govt. of Uttarakhand intended to incentivize eco tourism hotels and not commercial hotels running at market places. Fourthly, the hotels located in cities cannot be taken up as part of the activities and even though they have taken up as part of the activities even though they would have taken all the eco friendly measures.

4. Before the Ld. CIT (A) assessee has given very elaborate submissions and evidences to prove that assessee's hotel falls within the ambit and scope of eco tourism and has given point wise rebuttal to the AO's observations and also given various operations carried out towards environment along with the evidences. Assessee also strongly relied upon the judgment of Hon'ble Uttaranchal High Court in the case of **CIT vs. M/s. Aanchal Hotels reported in (2016) 241 taxman 108**. The assessee's detailed submissions have been incorporated in the appellate order from pages 8 to 35 alongwith AO's remand report called upon by the Ld. CIT (A).

5. After considering the entire submissions Ld. CIT(A) has upheld the action of the AO and held that mainly running a hotel in the state

of Uttaranchal would not be enough to attract benefit u/s 80IC and AO has also carried out the physical examination of assessee's hotel which has been mentioned in the remand report. The assessee's submissions on the issue of how it is eligible for deduction u/s 80IC falls within the ambit of eco tourism has been rejected on the ground that all the points mentioned by the assessee would be true only if any hotel is located in any natural habitat carrying out eco tourism. The assessee would have said to be engaged in eco-tourism if it has actually taken any activities like it has host certain ecological treks, nature trails and similar activities on its own and not through travel desk. Accordingly, he confirmed the findings of the AO.

4. Before us, Ld. Counsel for the assessee strongly relied upon the judgment of Hon'ble Jurisdictional High Court in the case of **CIT vs. Aanchal Hotels Pvt. Ltd. (supra)** and submitted that Hon'ble High Court has given the detailed guidelines as to under which conditions activities of hotel can be reckoned as eco tourism and if the principles laid down in the said judgment is applied in the present case then assessee's activities ostensibly falls within the ambit of definition of eco tourism in the meaning of section 80IC read with Entry 15 of the 14th Schedule.

5. On the other hand, Ld. DR strongly relied upon the order of the AO and Ld. CIT (A).

6. After considering the entire facts and material placed on the record and the findings given in the impugned orders, we find that entire controversy revolves around whether assessee's hotel falls within the ambit of eco tourism as defined in Entry 15 of the 14th Schedule so as to avail deduction u/s 80IC. Entry 15 of the 14th Schedule reads as under:-

“15. Eco-tourism including hotels, resorts, spa, entertainment/amusement parks and ropeways”

7. Thus, the scope of eco tourism within the state of Uttaranchal specifically in the hotels located in Dehradun has been elaborately dealt by the Hon'ble Jurisdictional High Court in the case of **CIT vs. Aanchal Hotels Pvt. Ltd.** has discussed this issue threadbare after analyzing the meaning in concept of eco tourism and various criteria which are required to be seen while deciding such kind of matters. The conclusion in the finding of the Hon'ble High Court are there from pages 28 to 36 which reads 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 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 "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 80IC. 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 set

up 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 else one 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 practiced 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 fulfills the requirement under Section 80-IC of the Act. May be, 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.”

8. In para 3.1 and 3.2 and 3.4, the Hon’ble Court has elaborated the various definition and conditions which are deciding factors for treating a hotel engaged in eco tourism. Accordingly, I remand back this issue to the file of the AO to deal with and decide the issue in the light of the aforesaid guideline and principal laid down by the Hon’ble High Court and after giving due opportunity to the assessee to substantiate its case.

9. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 26th April, 2019.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 26/04/2019

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

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ITAT, New Delhi