

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, DEHRADUN**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 546/Del/2016 : Asstt. Year : 2012-13

Gautam Residency Hotel & Banquet, C/o Rajiv Saxena & Co., Adv. & Solicitors, 318, Pocket-D, Mayur Vihar-II, New Delhi-110091	Vs	Income Tax Officer, Ward-1(4)(1), Rishikesh
(APPELLANT)		(RESPONDENT)
PAN No. AAIFG0458J		

Assessee by : Sh. Rajiv Saxena, Adv.

Revenue by : Sh. N. C. Upadhyay, Sr. DR

Date of Hearing: 16.09.2021

Date of Pronouncement: 23.09.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Dehradun dated 26.11.2015.

2. Following grounds have been raised by the assessee:

"1. That the Ld. Commissioner of Income Tax(Appeals), Dehradun, has grossly erred in law as well as on facts in upholding the order of the assessing officer treating AY 2007-08 as the initial assessment year of the business, failing to appreciate that the appellant commenced its operation w.e.f. 16-04-2008 the date on which Pargana Magistrate, Tehri, Garhwal certified the firm for starting the business i.e. AY 2008- 09 and hence disallowance of 75% of deduction claimed by the appellant is unsustainable in law.

2. That learned Commissioner of Income Tax(Appeals) has grossly erred on facts and in law in upholding the disallowance of deduction u/s 80IC of the Act in respect of pickup receipts and interest income.

3. That the Ld. Commissioner of Income Tax(Appeals), Dehradun, has erred in law as well as on facts in confirming the disallowance of Rs.1,05,000/- out of the claim of depreciation in respect of the land and building.”

3. Brief facts of the case are that the assessee is a firm filed its return of income on 29.09.2012 declaring total income at Rs.61,640/- after claiming deduction u/s 80IC of the Income Tax Act, 1961 of Rs.25,96,171/-. The assessee firm having two partners of equal profit/loss sharing, enjoying income from running business in the name & style as M/s Gautam Residency Hotel and banquet at New Tehri Road, Chamba, Tehri Garhwal, uttrakhand. The assessee has declared net profit from Hotel receipts of Rs.25,96,171/- including interest of Rs.1,37,339/- and other income of Rs.61,678/- against gross receipts of Rs.49,45,732/-.

4. The trite issue to be determined in this case is whether the assessment year 2012-13 be treated as the 6th year for the purpose of computation of deduction u/s 80IC or not.

5. Facts relevant to the issue are that the assessee started business operations of running the Hotel from 10.10.2006 relevant to the assessment year 2007-08 as per the Form 10CCB filed before the revenue authorities. Later, the assessee submitted that since the first bill was drawn on 20.05.2007, the assessment year 2008-09 be treated the first year of

commencement of business. The Assessing Officer treated that deduction u/s 80IC is eligible for a period of 5 years @ 100% from the assessment years 2007-08 to 2011-12, hence, for the assessment year in question (A.Y. 2012-13), the assessee is eligible for deduction @ 25%. It was submitted that since the operations commenced by way of guest entry only from the assessment year 2008-09, the deduction needs to be computed from assessment years 2008-09 to 2012-13. No contrary evidence has been brought by the revenue except pointing out the date mentioned in the Form 10CCB which the assessee contested as a mistake. Hence, based on the reasons canvassed by the Id. AR, we hereby hold that the assessment year 2012-13 being the 5th year of operation, the assessee is eligible for 100% deduction u/s 80IC.

6. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 23/09/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 23/09/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR