INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 4901/Del/2019
Asstt. Year: 2015-16

ITO Ward-26(1) New Delhi.	Vs.	VG Properties Pvt. Ltd., 38, DDA Commercial Complex, Zammrudpur, Kailash Colony, New Delhi – 110 048 PAN AAACV2248J
(Appellant)		**(Respondent)**

Department by:	Shri Vivek Vardhan, Sr. DR
Assessee by :	Shri Arun Kishor, CA
Date of Hearing	30/01/2023
Date of pronouncement	30/01/2023

O R D E R

PER ASTHA CHANDRA, JM

The appeal filed by the Revenue is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-9, New Delhi **("CIT(A)")** dated 08.03.2019 pertaining to Assessment Year **("AY")** 2015-16.

2. The Revenue has raised the following grounds of appeal:-

> *"1. On the facts and circumstances of the case the Ld.CIT(A) erred in holding that the receipts of Rs. 1,74,00.000/- received on revenue sharing basis as business receipts.*
>
> *2. On the facts and circumstances of the case the Ld.CIT(A) erred in allowing the deduction u/s 801D to the assessee deposit the fact that the assessee has sub-letted the Hotel property at Goa to M/s Highest Cruises and Entertainment Pvt. Ltd. who was actually running the Hotel business and the assessee has received rent in the form of revenue sharing.*

> *3. On the facts and circumstance of the case the Ld.ClT(A) erred in not appreciating that the deduction u/s 801D is available to the assessee who is engaged in the business of hotel and the assessee is clearly not engaged in the business of the Hotel and even the main object clause of MOA is to "to carry on the business as developers, promoters for commercial and industrial buildings."*
>
> *4. On the facts and circumstance of the case the Ld.ClT(A) erred in relying on Chennai Properties and Investments Ltd. V. C1T [2015] 373 ITR 673 as facts are completely different and without appreciating the judgement given by the Hon'ble Apex Court in case of Raj Dadarkar & Associates v. Assistant Commissioner of Income Tax, CC-46 [2017] 394 ITR 592 (SC).*
>
> *5. On the facts and circumstance of the case the Ld. CIT(A) erred in relying on the principal of consistency as the Hon'ble Delhi High Court in case of Krishak Bharati Cooperative Ltd. [2012] 23 taxman.com 265 (Delhi) has held that there cannot be a wild application of the principal of consistency after interpreting the judgement given by the Hon'ble Apex Court in case of Radhasoami Satsang.*
>
> *6. On the facts and circumstance of the case the Ld. CIT (A) erred in allowing expenses claimed by the assessee."*

3. Briefly stated the facts are that the assessee company is stated to be engaged in the business of hotel services. It filed its return for AY 2015-16 electronically on 24.09.2015 declaring income of Rs.11,43,320 after availing deduction of Rs.44,54,647 under section 80-ID of the Income Tax Act, 1961 **(the "Act")**. The case was selected for scrutiny under CASS after initial processing under section 143(1) of the Act. During assessment proceedings, the assessee was required to substantiate its claim of deduction under section 80-ID of the Act. Vide letter dated 28.11.2017, the assessee submitted that it got approval for a three star hotel in Goa with effect from 21.09.2013. Therefore, it has claimed proportionate deduction under section 80-ID for the period from 21.09.2013 to 31.03.2014 amounting to Rs.44,54,647 as per auditor's report. Necessary documents regarding ownership of the hotel property were produced before the Ld. Assessing Officer **("AO")**.

4. The submission of the assessee was not acceptable to the Ld. AO. He found that the assessee company had taken the hotel property on rent which was subletted to M/s. Highest Cruises & Entertainment Pvt. Ltd. and

the assessee company received rental income only from subletting of its assets. He disbelieved the Revenue Sharing Agreement entered into between the assessee and M/s. Highest Cruises & Entertainment Pvt. Ltd. saying that it was only a device in veil of which income from subletting is shown as income derived from the business of hotel located in the specified area. He, therefore, rejected the assessee's claim of deduction under section 80-ID of the Act holding that mere approval is not sufficient as the conditions precedent laid down in sub-section (2) of section 80-ID are not satisfied. Accordingly, he treated the income of Rs.1,74,00,000 as income from other sources and completed the assessment on total income of Rs.1,85,43,320 on 30.11.2017 under section 143(3) of the Act.

5. Aggrieved the assessee filed appeal before the Ld. CIT(A) and made a lengthy submission identifying the issues to be decided by the Ld. CIT(A) and offering explanation relatable to them which have been incorporated by the Ld. CIT(A) in para 4 of his order. On considering the submissions/explanation given by the assessee, the Ld. CIT(A) recorded his findings in paras 6 & 7 of his order which are extracted below:

> *"6. Ground No. 2, 3, 4 and 5 are directed against assessment of rental declared under 'business income as 'Income from Other Sources' and disallowance of claim of deduction u/s 80ID.*
>
> *Brief facts as noted from the impugned order are that the assessee company during the course of assessment proceedings furnished a copy of the revenue sharing agreement to the Ld. AO. On perusal of the Revenue sharing agreement, the AO observed that the assessee company is owner of only 1/8" share of the property on which the hotel was situated and the balance 7/8" share is taken by the assessee company on lease from other co-owners. He further opined that the assessee company has sub-let the hotel to M/s Highest Cruises & Entertainment Pvt. Ltd. and the Revenue Sharing Agreement was just a device to declare the sub-let income assessable as "Income from Other Sources" as "Income from Business and Profession" so as to enable itself to claim deduction u/s 80ID(2) of the Act. Thus, the deduction claimed by the assessee company was disallowed by the AO and the receipts were assessed as Income from Other Sources.*
>
> *6.1 The appellant company during the course of appellate proceedings claimed that the Revenue Sharing Agreement is in the nature of Operation and Maintenance Agreement and the receipts under said agreement were assessable as*

business receipts and thus, the business income is also eligible for deduction u/s 80ID(2) of the Act.

6.2 The appellant company has received share of income from the gross revenue of the hotel and allied services provided. It is further observed that as per Clause no. 6 of Revenue Sharing Agreement, the business is to be run by the two parties in a coordinated manner along with the appellant as per the scope of work and responsibilities mutually agreed. The assessee company explained that it undertaken following business activities:-

- *For increasing the profitability of joint business, the appellant has out of its own resources, during the current year with great effort has obtained Three Star rating from the Ministry of Tourism Govt, of India.*

- *The appellant as per its own leverage, corporate experience, knowledge is required to promote the brand for furtherance of joint business as per clause no. 8.9.2.*

- *The appellant had incurred costs on interior designer, decorator, consultant for the hotel who shall render design services for joint business - clause 8.9.3.*

- *HCEPL revenue sharing partner shall in consultation with the appellant carry out all advertising, marketing and other related promotional activities for the promotion of joint business of the two parties with a view to enhance the prospective business and common revenues - clause 8.1.2.*

- *It has incurred expenses on consultants for promotion, horticulture, advertising and marketing for joint business.*

6.3 The appellant as an organizer of business, has developed a full-fledged hotel with all amenities / facilities and has obtained a necessary permissions / licenses including accreditation from Govt, of India Ministry of Tourism in the name of its hotel Villa De-Penha. The assessing officer's opinion of treating the inseparable facilities, amenities, licenses and permissions provided under a revenue sharing agreement, as subletting of property cannot be upheld. The revenue sharing agreement has some clauses of inclusions and exclusions of some of the revenues, as contractually agreed between the parties for sharing of the income from the hotel, which cannot be interpreted to mean that it is letting of property when it is based on total revenue from the hotel and services. After considering the main object clause of MOA which includes earning of income from developing / letting of properties, and the judicial pronouncements in the case of Chennai Properties and Investments Ltd. Vs. CIT Central 3 Tamil Nadu (2015) 56 taxmann.com 456 (SC), I hold that the receipts of the assessee are to be assessed as revenue from business activities.

6.4 The AO has further disallowed the deduction claimed by the appellant company under Section 80ID(2) on the pretext that the revenue from business is assessable as Income from Other Sources. The AO has not found any deficiency in the fulfilment of conditions for claiming deduction u/s 80ID(2).

6.5 The appellant company submitted that it has complied with all the pre-conditions for claiming deduction u/s 80ID(2) and duly furnished the copy of Form 10CCBBA, being a report u/s 80ID duly certified by Chartered Accountant as Page 29-32 of Paper book. From the perusal of said report it is evident that even an independent Chartered Accountant has certified the fact of fulfilment of all conditions for claiming deduction u/s 80ID(2) of the Act.

6.6 It is also noted that under same facts and circumstances, the Revenue has accepted and treated the share of profit received from the hotel as business income in the AY 2012-13 and 2013-14. There is no change in any facts during this year. Hence, observing the principle of consistency as laid down by the Hon'ble Apex Court in the case of Radhasoami Satsang v. CIT (19921 193 ITR 321 (SC) wherein, it was held inter alia that in the absence of any material change justifying the Department to take a view different from that taken in earlier proceedings., the claim of the appellant for treating the receipt from business income deserves to be allowed.

6.7 Further after verification of facts and after considering the contentions of the assessing officer and submissions of the appellant, I find that in view of full compliance of conditions specified u/s 80ID of The IT Act, the appellant is entitled to claim incentive as provided u/s 80ID of The IT Act.

In view of my detailed deliberation noted above, the claim of the appellant w.r.to treating the rental receipt as income from Business and Profession is upheld^ Consequently, the deduction u/s 80ID(2) is allowed. The AO is directed to compute and allow the same. Accordingly, the grounds no. 2 to 5 are allowed.

7 Ground no. 6 is directed against the assessing revenue from Business as "Other Source income" without allowing deduction of expenses incurred for earning of said income. The AO has hot given any finding or reason of not allowing said expenses.

7.1 I have gone through the nature of expenses incurred by the appellant company and debited to the Profit and Loss account of the appellant company. The expenses incurred by the appellant company are certainly for the conduct of business and are inextricably linked with the revenue derived by the appellant company. Thus, the stated expenses were allowable even against the income from Other Sources u/s 57 of the Act.

However, I have since decided that the revenue derived by the appellant company is assessable under the head business and profession and the AO has not expressly disallowed those expenses, the deduction of the same is allowable and thus, this ground of appeal is allowed."

6. Dissatisfied by the aforesaid finding of the Ld. CIT(A), Revenue is in appeal before the Tribunal and all the six grounds of appeal relate thereto.

7. The Ld. DR placed reliance on para 4 of the Ld. AO's order which he supported. On the other hand, the Ld. AR drew our attention to the observation of the Ld. CIT(A) made in para 6.6 of his order wherein the Ld. CIT(A) observed that the Revenue has accepted and treated the share of profit received by the assessee from the hotel as business income in AYs 2012-13 and 2013-14 and that there is no change in any fact during the year. The Ld. AR referred to the assessment order dated 25.02.2015 passed by the Ld. AO under section 143(3) of the Act for AY 2012-13, a copy of which is placed at page 115-116 of the Paper Book. The Ld. AR also pointed out that it would be obvious from the chart placed at page 24 of Paper Book-II that the Ld. CIT(A) has allowed the claim of the assessee in the immediately preceding AY 2014-15 as well.

8. We have carefully considered the rival submission of the parties and perused the record. The only major objection of the Ld. AO for denial of the assessee's claim of deduction under section 80-ID of the Act is his disbelief of the Revenue Sharing Agreement entered by the assessee with M/s. Highest Cruises & Entertainment Pvt. Ltd. The Ld. AO did not consider the fact that as per clause no.6 of the said agreement the business is to be run by the two parties in a coordinate manner and receive their respective share of income from the gross revenue of the hotel and allied services provided. The Ld. CIT(A) has considered that the Revenue Sharing Agreement has some clauses of inclusion and exclusion of some of the revenues as contractually agreed between the parties for sharing of the income from the hotel which cannot be interpreted to mean that it is letting of property when it is based on the total revenue from the hotel and services. We agree with the finding of the Ld. CIT(A). Moreover, the assessee has submitted report of Chartered Accountant in Form-10CCBBA certifying that the assessee satisfied all the conditions for claiming deduction under section 80-ID of the

Act. No adverse comment in this regard has been made by the Ld. AO. We, therefore, uphold the finding of the Ld. CIT(A) that the income shown by the assessee is assessable as income from business and that the expenses claimed by the assessee thereagainst is an allowable deduction. It is also to be noted that the Revenue itself has accepted the claim of the assessee in AYs 2012-13 and 2014-15. The facts remaining the same for the AY under consideration a different view is not tenable. Finding no substance in the appeal of the Revenue and no infirmity in the order of the Ld. CIT(A), we reject the Revenue's appeal.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 30th January, 2023.

sd/-	sd/-
(N.K. BILLAIYA)	**(ASTHA CHANDRA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMEBR**

Dated: 30.01.2023

*Mohan Lal**

Copy forwarded to-

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	