

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 3213/DEL/2018 [A.Y. 2013-14]

M/s Seaview Developers [Pvt] Ltd
1102, Tower B, 11th Floor
Peninsula Business Park,
Senapati Bapat Road
Lower Parel, Mumbai

Vs. The Dy. C.I.T
Circle 23(2)
New Delhi

PAN: AAJCS 4143 C

(Applicant)

(Respondent)

Assessee By : Shri Rishab Malhotra, AR

Department By : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 17.07.2023

Date of Pronouncement : 20.07.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 28, New Delhi dated 14.03.2018 pertaining to Assessment
Year 2013-14.

2. The grievance of the assessee is two-fold :

(i) Firstly, the assessee is aggrieved by the denial of deduction u/s 80IAB of the Income-tax Act, 1961 [the Act, for short] in respect of income from sale of food and beverages amounting to Rs.18, 80, 716/-.

(ii) Secondly, the assessee is aggrieved by the denial of deduction under section 80IAB of the Act in respect of interest expenses amounting to Rs. 56,31,167/-.

3. Briefly stated, the facts of the case are that the assessee filed its return of income on 29.11.2013, declaring total income at NIL and book profit of Rs. 41,64,58,907/-. Return was selected for scrutiny assessment and, accordingly, statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed deduction under section 80IAB of the Act on income for developing and operating SEZ. The assessee is a SEZ developer and is primarily engaged in the

business of developing and leasing of property in IT/ ITES Sector, Noida. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has claimed deduction on sale of food and beverages amounting to Rs. 18, 80,716/-.

5. The assessee was asked to justify its claim and the assessee replied that it is in the activity of leasing its property and generating income from it, being a SEZ company. It was explained that there is no direct sale of food and beverages by the company. It is only through leasing of the property that income has generated. The Assessing Officer was not convinced with the reply of the assessee and claim of exemption was denied.

6. Moving further, the Assessing Officer noticed that the assessee has also claimed deduction of interest income of Rs.88,767/-. The assessee was asked to justify its claim.

7. In its reply, the assessee explained that in the computation of income, it has added Rs. 56,31,166/- on account of reversal of earlier year dividend income. The assessee explained that total cost on finance was Rs. 57,19,934/- and after deducting interest income of Rs.

88,767/-, the assessee has added back Rs. 5,63,167/-. The Assessing Officer was of the opinion that any disallowance/reversal will enhance the income and claim of deduction will be higher.

8. The Assessing Officer added Rs. 56,31,167/- to the income of the assessee under section 68 of the Act.

9. The assessee carried the matter before the ld. CIT(A) but without any success.

10. Before us, the ld. counsel for the assessee vehemently stated that the claim of deduction on the sale of food and beverages is in line with Instruction No. 50 issued by the Government of India, Ministry of Commerce and Industry, Department of Commerce, SEZ Sector and in further support, reliance was placed on the decision of the co-ordinate bench in the case of M/s Unitech Developers & Projects Ltd 4032/DEL/2015.

11. In so far as claim of deduction on interest is concerned, the ld. counsel explained that it has added back the amount and there is no question of treating the same as income under section 68 of the Act.

12. Per contra, the ld. DR strongly supported the findings of the lower authorities.

13. We have carefully perused the orders of the authorities below. In so far as Instruction No. 50 [supra] is concerned, it has authorized activities which can be undertaken by the developer, approved company developer by default, and one of the items is cafeteria/canteen for staff in the processing area. Since the income of the assessee is not derived from cafeteria/canteen for staff, therefore, the said Instruction is not applicable to the facts of the case.

14. Reliance on the decision of the coordinate bench is misplaced in as much as in the said case, the activities of the assessee was covered with item No 18 of the said Instruction No. 50.

15. In so far as claim of interest expense is concerned, we find that while computing the income, the assessee has added back interest expense considered under the head "Income from other sources Rs. 57,19,934" and under the head income from other sources, the assessee has deducted interest expense of Rs. 88,767/- only, which

means that the assessee has increased its eligible profit by Rs.56,31,167/-.

16. Considering the facts of the case in hand, the assessee ought to have reduced this amount from eligible profit. We, accordingly, direct Assessing Officer to reduce Rs. 56,31,167/- from the eligible profit and recompute deduction under section 80IAB of the Act. Under no circumstances Rs.56,31,167/- can be considered as income under section 68 of the Act. With the above, the ground of the assessee is partly allowed.

17. In the result the appeal of the assessee in ITA No. 3213/DEL/2018 is partly allowed.

The order is pronounced in the open court on 20.07.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 20th JULY, 2023.

VL/

Copy forwarded to:

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

Asst. 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	
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