

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI**  
**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER**  
**AND**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1343/MUM/2024**  
**Assessment Year: 2016-17**

Deputy Commissioner of Income Tax – 13(3)(2), Mumbai	Vs.	Riva Resorts Pvt. Ltd., A 306, Radhakrishna Apartments, Dahisar S.O., Mumbai – 400068 (PAN : AADCR2341B)
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Ms. Gunjan Kakkad and  
Mr. Fenil Bhat, A.Rs

Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 02.07.2024

Date of Pronouncement : 27.09.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the Revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1060004100(1), dated 23.01.2024, against the assessment order passed by the Income Tax Officer, Ward 13(3)(2), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 22.12.2018 for Assessment Year 2016-17.

2. The grounds taken by the Revenue is as under:

*“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Disallowance of deduction u/s 80ID of Rs. 61,02,483/ ignoring the fact that the assessee's claim in A.Y. 2015-16 was dismissed by the CIT(A) as assessee had opted for Vivad se Vishwas Scheme and not contested the addition made by AO.*

*2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Disallowance of deduction of Rs. 61,02,483/ under section 80ID of the Income Tax Act, 1961 without appreciating the fact that the assessee had filed Form 10CCBBA manually which is supposed to be file online.*

*3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 92,73,864/- as unexplained cash credit under section 68 without appreciating the fact that there is no documentary evidences such as confirmations, bank statement and IT Return proof of the loan givers.*

*4 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of disallowance of salary payment of Rs. 12,00,000/- and commission of Rs. 58,920/ without appreciating the fact that there is no supporting documents to substantiate the claim.*

*5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 10, 00,000/- as unexplained cash credit under section 68 on the basis of fresh evidence submitted by the assessee during the course of appellate proceedings and without giving enough 'time to the Assessing Officer to examine the fresh evidence and submit the remand report called for by CIT(A).*

*6. The appellant prays that the order of the CIT(A) on the grounds be set aside and confirm the order of the AO.”*

2. Ld. Counsel for the assessee submitted before the Bench that identical issues are involved in appeal for Assessment Year 2017-18 in ITA No. 481/Mum/2024 filed by Revenue which was heard by the Co-ordinate Bench of ITAT, Mumbai on 13.06.2024. since the order for the same is awaited, therefore the matter in the present appeal for Assessment Year 2016-17 may be adjourned, since the outcome in the decision for Assessment Year 2017-18 has a significant bearing on the current matter.

3. The order for the said appeal for Assessment Year 2017-18 has been pronounced on 21.08.2024. From the perusal of the said order, it is noted that the only issue common in both the appeals, i.e., for Assessment Year 2017-18 and present one for Assessment Year 2016-17, is in respect of disallowance of deduction u/s. 80ID, amounting to Rs.61,02,483/- for the year under consideration. All other issues raised

by the Revenue are specific to Assessment Year 2016-17 and needs to be adjudicated upon.

4. Taking up ground no.1 & 2 in respect of disallowance of deduction u/s.80ID, the findings arrived at by the Co-ordinate Bench of ITAT in the order for Assessment Year 2017-18 squarely covers the present case before us. In the observations made by the Co-ordinate Bench of ITAT, reference is made to disallowance made pertaining to Assessment Year 2016-17, which ld. CIT(A) had allowed. While giving finding for Assessment Year 2017-18, Co-ordinate Bench held that decision of ld. CIT(A) in allowing the deduction claimed u/s. 80ID does not suffer from impropriety and/or illegality and therefore warrants no interference. The relevant observation and extent findings in this respect are extracted below:

*“8.5 We have given thoughtful considerations to the peculiar facts and circumstances of the case. The Ld. D.R. supported the order of the AO in making the addition under consideration. We observe that the AO made the addition under consideration mainly on the reason that in the previous assessment years le. A.Y. 2015-16 and 2016-17, identical deduction claimed u/s 80ID of the Act has been rejected and therefore the claim is not maintainable. The AO also noted the fact that the issue qua deduction claimed u/s SOID of the Act is still pending before the Ld. Commissioner.*

*8.6 On the contrary the Assessee before us by producing the order dated 10.09.2022 passed by the then Ld. Commissioner/NFAC's order for the A.Y. 2015-16 demonstrated that in that case the Assessee had opted for Vivad Se Vishwas Scheme (VSVS) and therefore the Assessee's appeal was dismissed as withdrawn by the then Ld. Commissioner.*

*8.7. The Assessee by producing the order dated 23.01.2024 passed by the then Ld. Commissioner/NFAC's, which pertains to A.Y. 2016-17 further demonstrated that the then Ld. Commissioner/NFAC's has also dealt with the identical disallowance of Rs.61,02,483/- qua deduction claimed u/s 80ID of the Act and considering the NFAC's decision dated 06.12.2023 relevant for the A.Y. 2017-18 in the case of the Assessee, ultimately allowed such claim, by holding as under:*

*"6. Ground No.-1: Disallowance of the Deduction claimed under section 80ID of the Act for 61,02,483:*

*6.1 The Appellant raised Ground No. 1 in objection to the disallowance of the deduction of 61,02,483 under Section 80ID of the Income Tax Act, 1961. The primary contention was that the Learned Assessing Officer erroneously relied on the assessments of the previous years, AY 2015-16, to disallow the claimed deduction in the current assessment year. The appellant*

contends that the Learned Assessing Officer's approach, which heavily leaned on past assessments without adequately considering the specific circumstances of the current assessment year, is untenable. Each assessment year is an independent unit, and the eligibility for deductions under Section 80ID should be evaluated based on the facts and conditions of the relevant fiscal year.

6.2 Further, the appellant also contested that the appellant claimed a deduction under Section 80ID, which was subsequently queried by the Assessing Officer through notices dated 18/08/2018 and 01/11/2018. The appellant submits that they have diligently responded to these queries on 7th December 2018. It was further stated that no additional "Show Cause Notice" was issued specifically challenging the Section 80ID deduction claim for the impugned assessment year (AY 2016-17). The appellant emphasizes the absence of an opportunity to present its case regarding the disallowance of the deduction, asserting a violation of the principles of natural justice. The reliance solely on the assessment of the previous fiscal year without a thorough examination of the current year's circumstances is deemed inadequate and in contravention of established legal principles.

The appellant's reliance on legal precedents, particularly the Supreme Court's judgment in Sahara India (Firm) Vs. Commissioner of Income-tax, wherein they underscore the necessity and importance of providing an opportunity for a pre- decisional hearing to an assessee, even in the absence of an express provision. Additionally, the appellant cites the case of Principal Commissioner of Income Tax Vs. Wilson Particle Board Industries Ltd., which invalidates decisions made without a pre-decisional hearing.

6.3 In addition to contesting the reliance on the disallowance made in the previous year without affording the opportunity for a hearing through a Show Cause Notice, the appellant has also submitted the order of NFAC CIT(A) AY 2017-18 through their submission dated 13/12/2023, wherein the appellant highlighted that the Commissioner at the National Faceless Appeal Centre (NFAC) allowed the grounds of appeal and accepted the contentions and detailed submissions provided in support of claiming the deduction under Section 80ID.

6.4. Upon careful examination of the Order of AY 2017-18, it has been noticed that the Appellant has presented detailed responses to the concerns raised by the Assessing Officer, addressing each point of contention with documentary evidence and legal references. The appellant adequately addressed concerns over the manual filing of Form 10CCBBA, providing a certificate from Chartered Accountants and citing relevant judicial decisions. Hotel classification discrepancies were resolved with a Department of Tourism certificate categorizing the hotel as "B" Category, supported by payment records. Scrutiny of the Establishment Certificate revealed internal contradictions, emphasizing its operational nature. Clarifications on utility connections challenged arbitrary criteria, highlighting the construction of the hotel as the core purpose of Section 80ID in promoting tourism.

6.5 Furthermore, according to the mentioned order, it has been noted that the appellant elaborated on the deduction claimed under section 80IB(10) of the Act. They emphasized that if the assessee fails to meet specific conditions, the entire deduction under this section should not be

disallowed. Relevant legal precedents were cited to support this argument, including i) Biswas Promotors Pvt. Ltd. u/s ACIT, [2013] 214 taxman 524; ii) CIT v/s Arun Exelo Foundation Put. Ltd., [2013] 212 taxman 342 (Mad.); iii) ITO v/s Paras Builders, 69 SOT 82. Additionally, reference was made to their jurisdictional Hon'ble Jurisdictional High Court in CIT v/s Bramha Associates, 333 ITR 289, where proportionate deduction was allowed even when certain conditions for claiming deduction under section 801B(10) of the Act were not fully met."

8.8 We have given thoughtful considerations to the peculiar facts and circumstances of the case and observe that the Ld. Commissioner not only thoroughly considered the parameters of section 80ID of the Act and the relevant facts and the documents submitted by the Assessee but also the order passed by the NFAC/Ld. Commissioner in the case relevant to A.Y. 2017-18 of the Assessee itself and therefore in our considered view the decision of the Ld. Commissioner in allowing the deduction claimed u/s 80ID of the Act does not suffers from any perversity, impropriety and/or illegality and therefore warrants not interference. Resultantly, the Ground Nos.3 & 4 raised by the Revenue qua issue under consideration stands dismissed."

5. Following the same, for the purpose of consistency, we do not find any reason to interfere on the findings arrived by the ld. CIT(A) in the present case. Accordingly, ground no.1 and 2, filed by the Revenue are dismissed.

6. Ground no.3 is in respect of deletion of addition of Rs.92,73,864/- regarding opening balances of unsecured loans. Contention of the Revenue is that there is no documentary evidence such as confirmation, bank statement, ITR returns in respect of the said loan to allow the claim of the assessee. In this respect, observations and findings of the ld. CIT(A) were perused. Ld. Counsel for the assessee pointed out that in the assessment proceedings, comprehensive details were called for, since the case was taken up for the issue relating to "large increase in unsecured loans during the year". Assessee did not furnish details in respect of unsecured loans which were reported as opening balances coming from the preceding years. Details were placed on record in respect of loans taken during the year alone. Assessee contended that provisions of section 68 cannot be evoked on the opening balance of unsecured loans, since it is applicable for amounts credited during the relevant assessment year only. Ld. CIT(A) noted that assessee had made

comprehensive submission supported by documentary evidences. Since the addition made is in respect of opening balances carried forward from the preceding years is undisputed and uncontroverted, ld. CIT(A) allowed the ground taken by the assessee and deleted the addition so made.

6.1. Before us, these facts remained uncontroverted from the side of ld. Sr. DR. Considering the observations of ld. CIT(A) and findings arrived at, we find no reason to interfere in the same. Accordingly, ground no.3 taken by Revenue, in this respect is dismissed.

7. Ground no.4 is towards deletion of disallowance of salary payment of Rs.12 Lakhs and commission of Rs.58,920/- claimed by the assessee. In this respect, ld. CIT(A) had observed that these having duly recorded in the books of accounts and supported by documentary evidences containing ledger confirmations and IT returns of the Directors to whom the said amounts were paid. According to the assessee, these amounts paid to the Directors of the assessee Company namely, Mr. Sachin Naik and Mr. Bharat Naik, are genuine transactions. The observations and findings arrived at by ld. CIT(A) could not be refuted by the Revenue considering the meritorious adjudication by the ld. CIT(A) on these two disallowances. We find no reason to interfere with the same. Accordingly, ground no.4 taken by the Revenue is dismissed.

8. Ground no.5 is in respect of deleting the addition of Rs.10 Lakhs treated as un-explained cash credit u/s.68 of the Act, based on the journal entry 18.03.2016 in the ledger of Mr. Vishwanath Naik, which according to the ld. Assessing Officer lacked supporting evidence in the form of corresponding bank statement. In this respect, it was submitted that the loan was extended by Mr. Vishwanath Nair through his son Mr. Sachin Naik, through proper banking channel. This submission was not

considered and the addition was made. Assessee substantiated its claim before the ld. CIT(A) with documentary evidences, including ledger confirmation from both Mr. Vishwanath Naik and Mr. Sachin Naik along with bank statements of Mr. Sachin Naik. Considering these corroborative documentary evidences, ld. CIT(A) found it appropriate to delete the addition and allow the ground taken by the assessee. The observations and findings arrived at by ld. CIT(A) remain uncontroverted on the facts of the case. We have perused the same and find no reason to interfere with the same. Accordingly, ground no. 5 taken by the Revenue is dismissed.

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

Order pronounced on day of 27 September, 2024 under Rule 34 of The  
Income Tax (Appellate Tribunal) Rules, 1963

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 27 September, 2024***

*MP, Sr.P.S.*

**Copy to :**

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai