IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH 'G' NEW DELHI

BEFORE : SHRI I.C. SUDHIR, JUDICIAL MEMBER &
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 1901/Del./2014
Asstt. Year : 2007-08

Sunder Lal Semwal, Upper Bazar, Joshimath, Distt. Chamoli (Appellant)	vs.	A.C.I.T., Circle, Haridwar. (Respondent)

Appellant by	:	Sh. Gautam Jain, Advocate & Sh. P.K. Kamal
Respondent by	:	Sh. B. Ramnujaneyula, Sr. DR
Date of hearing	:	21.10.2016
Date of pronouncement	:	28.10.2016

ORDER

Per L.P. Sahu, Accountant Member:

This is an appeal filed by the assessee against the order of ld. CIT(A)-I, Dehradun dated 27.03.2012 for the assessment year 2007-08 on the following grounds :

"1. That the learned Commissioner of Income Tax (Appeals)-I, Dehradun has grossly erred both in law and on facts in upholding the disallowance of claim of deduction under section 80IC of the Act of Rs. 11,51,621/- on misconstruction of the statutory provisions contained in the Act and. facts and circumstances of the appellant company.

2 That learned Commissioner of Income Tax (Appeals) has erred in disregarding the decision of Hon'ble Delhi Bench of Tribunal in the case of Shri Bidhi Chand Singhal, Hotel Tourist Empire vs. ITO in ITA No. 3419/D/2009 for Assessment Year 2006-07, wherein identical claim of deduction had been allowed. The disallowance thus sustained in disregard of binding orders is neither justified nor valid.

3 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once the Serial No. 15 Part C of XIV Schedule clearly provided that eco-tourism included hotels then it ought to have held that all hotels are eligible for deduction under section 80IC of the Act in view of the judgement of Apex Court in the case of CIT vs. Taj Mahal reported in 82 ITR 544.

4 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the detailed submissions and evidence furnished by the appellant to support the claim of deduction and as such, disallowance so sustained is otherwise not in accordance with law. The disallowance made is otherwise based on highly subjective, whimsical and fanciful considerations which neither in law and nor on fact can be validly made a basis to disallow the legitimate claim of deduction and therefore, disallowance so made is illegal, untenable and wholly unsustainable.

5. That various adverse findings recorded by the learned Commissioner of Income Tax (Appeals) while confirming the disallowance of claim of deduction under section 80IC of the Act are based on misconception of the facts and circumstances of the case of the appellant and are factually incorrect and legally unsustainable."

2. From the above grounds of appeal, it emerges out that the only issue involved in the instant appeal pertains to disallowance of claim of deduction of Rs.11,51,621/- u/s. 80IC of the IT Act, 1961 (hereinafter referred to as 'the Act').

3. The brief facts of the case are that the assessee derives income from supply of MOH to ITBP, transportation work and hotel business. The assessee filed its return of income on 31.10.2007 declaring income of Rs.5,83,098/-. The AO noticed that the assessee claimed deduction on the income of Hotel business under section 80IC(2)(b) of the Act as applicable to the State of Uttarakhand under the entry at Sl. No. 13 of Schedule-XIV(Part C) which reads as under :

> *"Eco-tourism including hotels, resorts, spa, entertainment/amusement parks and ropeways".*

4. The Assessing Officer referring to office memorandum for insertion of the Fourteenth Schedule to the IT Act by Finance Act, 2003 noted that it lays down that industries eligible for such incentives should be environment friendly with potential for local employment generation and use of local resources. He also noted that once separate deduction for hotel business was given u/s. 80ID of the Act, the provisions of section 80IC was intended not for hotel or even for tourism in general but exclusively for 'ecotourism'. Referring to definitions of 'ecotourism' in various dictionaries, the AO further observed that industries eligible for such incentives should be environment friendly with potential for local employment generation and use of local resources. On being asked to justify the claim, the assessee submitted that in order to meet

out the ecotourism norms, he has installed solar water heater and CFL lights for energy conservation, installed sewage treatment plant for environment protection, the material used for construction of hotel has been procured locally and for generating the local employment, he has appointed local employees, which factors go to comply with the norms of ecotourism. It was also submitted that similar deduction has been allowed by the AO in the past year, i.e., 2006-07, the initial year of deduction. The AO was not satisfied with the contentions of the assessee. The observations of the AO are summarized as under :

(i). Out of the total receipt of Rs.35,42,170/- by way of hotel room rent, 51.23% had been received from a single customer, namely NTPC Ltd. (Tapovan Vishnugarh Hydro Power Project, Joshimath). The NTPC had taken the hotel rooms on rent on regular basis for accommodating its workforce. This part itself has nothing to do with tourism, let alone ecotourism.

(ii). The assessee's claim of having solar water treatment plant as well as sewage treatment plant was found to be wrong. The Income Tax Inspector who visited the hotel reported that such plants were not in existence. They were also not reported in the assessee's balance-sheet.

(iii). The assessee had also paid sewerage tax of Rs.3600/- for using the public sewer.

(iv). The hotel was using CFL along with normal tube lights and other regular electric appliances. The rooms were air-conditioned.

(v). No pollution control measures were visible even in the kitchen.

(vi). There was no water-harvesting or water-recycling or waste treatment. There was no lawn or plantation of any other type. It was neither a part of any ecotourism unit nor doing any activity to promote ecotourism.

(vii). The assessee was neither making any investment for conserving the environment or natural resources nor making any contribution in any such project or programme.

(viii). The AO personally visited the hotel and found no measure relating to ecotourism in existence there.

(ix). In view of this, he concluded that the assessee was an ordinary hotel situated in the market which facilitates lodging and boarding facilities like any other hotel and had no relationship with ecotourism.

(x). The assessee's contention that his claim had been accepted in the past, also stood discarded by AO observing that acceptance of the assessee's claim in the past did not prevent him from examining its correctness and, if found wrong on merits, disallowing it, as each assessment year is a different assessment year and facts for deduction

under the statute are to be established in each assessment year separately, as per requirement of law.

Accordingly, the AO held that none of the conditions for eligibility of deduction u/s. 80IC are fulfilled by the assessee and therefore, the claim of deduction of Rs.11,51,621/- was disallowed. The assessee challenged the order of the AO in appeal before the ld. CIT(A), who dismissed the appeal of the assessee and sustained the order of the AO.

5. During the course of hearing, the ld. Counsel for the assessee submitted that the deduction claimed u/s. 80IC had been allowed in earlier assessment year 2006-07 vide order u/s. 143(3) by the Assessing Officer and also in subsequent years 2008-09, 2009-10 and 2010-11 by the CIT(Appeals). The appeal of the Revenue filed before the Tribunal for A.Y. 2009-10 also stood dismissed on account of low tax effect. It was also submitted that once the deduction has been allowed in initial year, there is no justification to discard the same in subsequent year. It was submitted that the ld. Authorities below have to follow the rule of consistency. Reliance is placed for this proposition on the following decisions :

(i). CIT vs. Excel Industries Ltd.358 ITR 295 (SC)
(ii). CIT vs. J.K. Charitable Trust, 308 ITR 161 (SC)

It was further submitted the ld. CIT(A) while deleting the similar addition in appeal for A.Y. 2009-10 has realized the mistake committed by him in appeal for A.Y. under consideration observing as under :

> *"In this connection, it needs to be put on record that, while deciding the assessee's appeal for AY 2007-08 (Appeal No, 27/HDR/2009-10), I had also adopted the AO's line of thinking. But on a deeper appreciation of the facts and circumstances as well as the provision of law, I am of the view that, if the ratio of the decisions of the Hon'ble ITAT' is applied properly, deduction should not be denied simply because the assessee is unable to show that it has the NOC from the Pollution Control Board. It is also put on record that, as per my understanding of the facts and circumstances of the case and the provision of law, the assessee should not get the deduction."*

It was, therefore, urged that the orders of the authorities below should be set aside and the addition so sustained is liable to be deleted.

6. The ld. DR, on the other hand, relied on the orders of the authorities below and submitted that the assessee runs a commercial hotel, which has nothing to do with the ecotourism, as discussed by the ld. Authorities below in their respective orders. Therefore, the assessee is not entitled for deduction u/s. 80IC of the Act.

7. We have considered the rival submissions and have perused the entire material available on record including the orders of the authorities below. From the submissions of the assessee, it reveals that the assessee has laid emphasis only on the rule of consistency, as can be seen from the written synopsis filed by the assessee before us. The assessee has not tried to rebut the objections of the assessing officer that the assessee has failed to fulfill the norms of ecotourism. The assessee has also not countered the observations of the Assessing Officer as summarized by us in para 4 (i) to (x) of this order. One of the findings of the AO, based on record, is that out of the total receipt of Rs.35,42,170/- by way of hotel room rent, 51.23% had been received from a single customer, namely NTPC Ltd. (Tapovan Vishnugarh Hydro Power Project, Joshimath) and the NTPC had taken the hotel rooms on rent on regular basis for accommodating its workforce which itself has nothing to do with tourism or ecotourism. Whether such situation existed in previous or subsequent years or not is not made clear either on record or from any corroborative evidence before us. We, therefore, observe that the consistent view can be taken only where the facts and circumstances of a particular year are proved to be squarely identical in the other year. Otherwise, each year has to be viewed as separate unit in view of attending facts and circumstances of that year. In fact, existence of identical facts and circumstances is sine qua

non for applying the rule of consistency, which does not stand proved in the instant case. The observations of the Assessing Officer and the ld. CIT(A) in the light of various definitions of ecotourism as well as the observations made on the basis of office memorandum of finance bill, 2003 noted above also have not been countered by the ld. Counsel for the assessee. The ld. Counsel has also relied on the decision in the case of CIT vs. Anchal Hotels (P) Ltd. 287 CTR 233 (Uttarakhand), wherein it has been inter alia observed that NOC from Pollution Control Board cannot be the sole determinant of the question, as to whether the hotel is engaged in Ecotourism and this question has been decided in favour of the Revenue. Moreover, in this decision, Hon'ble High Court of Uttarakhand has left all the matters to the lower authorities for decision afresh in terms of various norms of ecotourism. In the instant case also complete examination is required on the norms of ecotourism whether existing in the present case or not. We, therefore, deem it expedient in the interest of justice to restore the entire matter to the file of Assessing Officer for deciding the issue afresh after considering the rule of consistency if the identical facts and circumstances are proved to exist in previous and subsequent years and also in terms of various norms of ecotourism as envisaged in the decision of Hon'ble Uttarakhand High Court in the case of

Aanchal Hotels (P) Ltd. (supra) relied on by the assessee before us. Needless to say, the assessee shall be given reasonable opportunity of being heard.

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

Order pronounced in the open court on 28.10.2016.

Sd/-	Sd/-
(I.C. SUDHIR)	(L.P. SAHU)
Judicial Member	Accountant Member

Dated :28.10.2016
*aks/-

Copy of order forwarded to:

(1) The appellant	*(2) The respondent*
(3) Commissioner	*(4) CIT(A)*
(5) Departmental Representative	*(6) Guard File*

By order

Assistant. Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi