IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Income Tax Appeal No.09 of 2012

Commissioner of Income Tax, Dehradun ....Appellant

Versus

M/s Aanchal Hotels Pvt. Ltd. .... Respondent

Mr. Hari Mohan Bhatia, Advocate for the appellant.
Mr. Pulak Raj Mullick, Advocate for the respondent.

With

Income Tax Appeal No.10 of 2012

Commissioner of Income Tax, Dehradun ....Appellant

Versus

M/s Aanchal Hotels Pvt. Ltd. .... Respondent

Mr. Hari Mohan Bhatia, Advocate for the appellant.
Mr. Pulak Raj Mullick, Advocate for the respondent.

With

Income Tax Appeal No.11 of 2012

Commissioner of Income Tax, Dehradun ....Appellant

Versus

M/s Aanchal Hotels Pvt. Ltd. .... Respondent

Mr. Hari Mohan Bhatia, Advocate for the appellant.
Mr. Pulak Raj Mullick, Advocate for the respondent.

With

Income Tax Appeal No.01 of 2016

Commissioner of Income Tax, Dehradun ....Appellant

Versus

Pankaj Nagalia .... Respondent

Mr. Hari Mohan Bhatia, Advocate for the appellant.
Mr. Anil Jain, Advocate with Mr. Pulak Raj Mullick and Mr. Risabh Jain, Advocates for the respondent.

Coram: Hon'ble K.M. Joseph, C.J.
Hon'ble V.K. Bist, J.

K.M. Joseph, C.J.(Oral)

These four appeals, under Section 260-A of Indian Income Tax Act, 1961 (hereinafter referred to as the Act) relate to the availability of the benefit of deduction contemplated under Section 80-IC of the Act for hotels which have been set up in the State of Uttarakhand. The order of the tribunal, which is impugned, proceeds on the reasoning that such benefit is available to those hotels which have obtained No Objection from the State Pollution Control Board.

2. In order to appreciate the contentions of the parties, we must at once set out the relevant provisions of the Act.

3. Section 80-IC was inserted by the Finance Act, 2003 (32 of 2003) w.e.f. 01.04.2004. Sub-section (1) and sub-section (2) clause (b) provides inter alia as follows:-

> **"80-IC.** (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains, as specified in subsection (3).
>
> 2.This section applies to any undertaking or enterprise,-
>
> (a) ...
>
> (b) which has begun or begins to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule, or which manufactures or produces any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule and undertakes substantial expansion during the period beginning—
>
> (i) ...
>
> (ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in the State of Himachal Pradesh or the State of Uttaranchal; or
>
> (iii) …."

4. We must also advert to Entry 15 of the 14th Schedule which is referred to in clause b as that is the most crucial which we must consider. It reads as follows:

> "15. Eco-tourism including hotels, resorts, spa, entertainment/amusement parks and ropeways"

5. All the respondents/assessees have set up hotels in the District Dehradun. The capital of the State of Uttarakhand is located in Dehradun. Dehradun is a city located within the district of Dehradun. The hotels which are the subject matter of this litigation are mostly located in the city of Dehradun; some of them are located a little far away from the city. The Assessing Officer in all these cases proceeded to take the view that it is not sufficient that an asseesee sets up a hotel to claim the benefit of Section 80-IC clause (b) but it should also partake of ecotourism. It is this view which has been finally overturned by the tribunal and the tribunal has proceeded to instead hold inter alia, as follows:-

> "4.1 The second question is-whether the deduction is available in case of a hotel which does not take steps towards ecological balance? The issue stands covered by the decision of "A" Bench of Delhi Tribunal in the case of Shir Bidhi Chand Singhal vs. ITO in ITA No.3419(Del)/2009 for assessment year 2006-07, dated 04.11.2010, a copy of which has been placed on record and which is authored by my learned brother. The issue has been decided in favour of the assessee. Therefore, following this decision, it is held that the assessee is entitled to deduction u/s 80-IC of the Act" For the sake of ready reference, paragraph nos.5 and 6 of the aforesaid decision are reproduced below:-
>
> > 5. We have heard both the parties, gone through the assessment order and order of CIT(A) and relevant provisions which have been referred by the AO and CIT(A). The provisions as contained in section 80IC and as relevant to the case of the assessee are as under:-
> >
> > 80-IC. (1)......
> >
> > .....
> >
> > .....

> .....
>
> 6. From the above section and item no.15 of Part-C of the Fourteenth Schedule, it can be observed that what is eligible for deduction is eco-tourism which include inter-alia hotels. It has been the contention of the assessee that his hotel is approved by the Government. The hotel cannot be approved by the Government without obtaining No Objection from the Pollution Department. There is no material on record to show that Pollution Department of the Government has not given No Objection to the assessee. It if is so, then, it cannot be said that the assessee is running a hotel which is outside the norms prescribed by the Pollution Department. If a plain reading is given to Item No.15 reproduced above, the eco-tourism inter-alia include hotels. No material has been brought on record to show that "eco-tourism" status has been granted to any other hotel and which status assessee does not have. If the logic applied by the Assessing Officer and CIT(A) is made applicable, then, the hotels which are not having the alleged "eco-tourism" status cannot be held to be entitled to deduction u/s 80-IC. If none of the hotels can be granted deduction u/s 80-IC, the item no.15 of Part C of the Fourteenth Schedule will be redundant. Therefore, in our opinion, in the absence of definition of "eco-tourism" the hotel as added into the Item No.15 of Part C is to be construed to be hotel situated in the State of Himachal Pradesh or the State of Uttaranchal having a valid licence on the basis of No Objection from Pollution Department which can be treated to be a hotel eligible for deduction u/s 80-IC as per provisions of section 80-IC. Therefore, we allow the claim of deduction u/s 80-IC to the assessee and the appeal of the assessee is allowed."

6. We have heard Mr. H.M. Bhatia, learned counsel appearing for the revenue/appellant, Mr. P.R. Mullick, learned counsel for respondent in ITA No.9 of 2012, ITA No.10 of 2012 and ITA No.11 of 2012 and we further heard Mr. Anil Jain, Advocate with Mr. Pulak Raj Mullick and Mr. Risabh Jain, Advocates in ITA No.1 of 2016.

7. According to Mr. H.M. Bhatia, learned counsel for the appellant, the order of the tribunal cannot be sustained. It is his contention that the benefit under Section 80-IC (b) would be available to only those hotels where it is associated with Ecotourism. As far as Ecotourism is concerned, in fact, he drew our attention to the guidelines for Ecotourism in and around protected areas issued by Ministry of Environment & Forests, Government of India. He would submit that this was brought out in the year 2006. He would submit, however, that considerable light is shed by the said document. It provides inter alia, as follows:

> 1.1 Ecotourism is defined as 'responsible travel to natural areas that conserves the environment and improves the well-being of local people'. Given the conditions in India, we propose that ecotourism includes tourism that is community based and community driven. The aim should to move towards a system of tourism around protected areas which is primarily community based tourism. Such tourism is low-impact, educational, and conserves the ecology and environment while directly benefitting the economic development of local communities.
>
> 1.3 Ecotourism, when practiced correctly, is an important economic and educational activity. It has the scope to link to a wider constituency and build conservation support while raising awareness about the worth and fragility of such ecosystems in the public at large. It also promotes the non-consumptive use of wilderness areas, for the benefit of local communities living around, and dependent on these fragile landscapes.
>
> 1.6 **PRINCIPLES OF ECOTOURSIM IN AND AROUND PROTECTED AREAS**
>
> Those who implement and participate in ecotourism activities should practice the following:
>
> - Adopt low-impact wildlife tourism that protects ecological integrity of forest and wildlife areas, secures wildlife values of the destination and its surrounding areas
> - Highlight the biodiversity richness, their values and their ecological services to people
> - Highlight the heritage value of India's wilderness and protected areas

- Build environmental and cultural awareness and respect
- Facilitate the sustainability of ecotourism enterprises and activities
- Provides livelihood opportunities to local communities
- Use indigenous, locally produced and ecologically sustainable materials for tourism activities.

2.2.3 All ecotourism activities should take place only in delineated ecotourism zones' delineated in the ecotourism plan."

He would, therefore, submit that the view taken by the tribunal that the matter will stand resolved with reference to the answer to the question as to whether the hotel has obtained No Objection from the Pollution Control Board, does not reflect the correct exposition of the law. According to him, the Assessing Authority has found that the hotels do not really answer the description of a hotel which is associated with Ecotourism as it has not embraced any steps which would bring it within the description of an Ecotourism hotel. We will be in the course of our judgment referring to some other assessment orders as also the orders of First Appellate Authority, as we explore the various dimensions of the questions, which were called upon to answer.

8. The contrary view is canvassed before us very fervently by learned counsel. In fact, Mr. Pulak Raj Mullick, learned counsel for the respondent/assessee in some of the cases would point out that the Court may not be oblivious to the setting in which Section 80-IC was inserted in the Act. He drew our attention to the Office Memorandum dated 07.01.2003, issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion, New Delhi. It reads inter alia as follows:

No. 1 (10)/2001-NER
Government of India
Ministry of Commerce & Industry
(Department of Industrial Policy & Promotion)
New Delhi, dated 7th January, 2003

Office Memorandum

Subject: New Industrial Policy and other concessions for the State of Uttaranchal and the State of Himachal Pradesh.

The Hon'ble Prime Minister, during the visit to Uttaranchal from 29th to 31st March, 2002, had, *inter-alia* made an announcement that "Tax and Central Excise concessions to attract investments in the industrial sector will be worked out for the Special Category States including Uttaranchal. The industries eligible for such incentives will be environment friendly with potential for local employment generation and use of local resources."

2. …

3. Accordingly, it has been decided to provide the following package of incentives for the States of Uttaranchal and Himachal Pradesh.

3.1 Fiscal Incentives to new Industrial Units and to existing units on their substantial expansion:

(i) New industrial units and existing industrial units on their substantial expansion as defined, set up in Growth Centres, Industrial Infrastructure Development Centres (IIDCs), Industrial Estates, Export Processing Zones, Theme Parks (Food Processing Parks, Software Technology Parks, etc.) as stated in Annexure-I and other areas as notified from time to time by the Central Government are entitled to:

(a) 100% (hundred per cent) outright excise duty exemption for a period of 10 years from the date of commencement of commercial production,

(b) 100% income tax exemption for initial period of five years and thereafter 30% for companies and 25% for other than companies for a further period of five years for the entire States of Uttaranchal and Himachal Pradesh from the

date of commencement of commercial production.

(ii) All new industries in the notified location would be eligible for capital investment subsidy @ 15% of their investment in plant & machinery, subject to a ceiling of Rs. 30 lakh. The existing units will also be entitled to this subsidy on their substantial expansion, as defined.

(iii) Thrust Sector Industries as mentioned in Annexure-II are entitled to similar concessions as mentioned in para 3(i) & (ii) above in the entire State of Uttaranchal and Himachal Pradesh without any area restrictions.

....
....

Thrust Industries Included in Annexure II of
O.M. No.1(10)/2001-NER Dated 7.1.2003 of
New Industrial Policy and other concessions
for the State of Uttaranchal and Himachal Pradesh.

SI. No.	Activity	4/6 digit Excise Classification	Subclass under NIC classification	ITC(HS) classification 4/6 digit
1	2	3	4	5
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.				
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.				
15.	Eco-tourism Hotels, resorts, spa, entertainment/amusement parks and ropeways		55101	
.				
.				

9. He would point out that Annexure-2 which enumerates the Thrust Industry for the States of Uttarakhand and Himachal Pradesh contained Entry 15 and it provides for Ecotourism Hotels, resorts, spa, entertainment/amusement parks and ropeways. He would, therefore, submit that the hotels which are set up in the State of Uttarakhand, would qualify as a Thrust Industry, drawing support from Clause 3.1.(iii). He would submit that being a Thrust Industry, without any area restrictions, if it is set up in the State of Uttaranchal (the State of Uttaranchal is known as State of Uttarakhand since 2007), the benefits contemplated under Clause 3.1(i)(a) and (b) and also 3.1 (ii) would be available. In other words, the Thrust Industries would be entitled to the benefits of capital investment subsidy as contemplated in 3.1 (ii). What is more, the hotels in question have already been given the benefit of subsidy. Therefore, he would submit that the Act must be construed in the light of the Office Memorandum. The Office Memorandum declares benefits of outright excise duty exemption (this may not be applicable in the case of the assessees) or/and they are also entitled to 100% income tax exemption for the first five years and thereafter 30% for companies and 25% for other than companies for a further period of five years for the entire State of Uttaranchal. It is his contention that, therefore, 3.1(i) clause (b), which provides for income tax exemption, was given statutory incarnation by the insertion of Section 80-IC with effect from 01.04.2004. Therefore, the Section must be construed in the context of the policy of the Government of India in substance. The contention appears to be that unlike the area restrictions, which impact the new industrial units or existing industrial units covered by clause 3.1 (i), in regard to the Thrust Industries, there is no

such area restriction. Therefore, the contention is that hotels, which are located in any part of the State of Uttarakhand, would be entitled to the benefit of the income tax deduction under Section 80-IC (b). He reminds the Court that the hotels were set up by the assessees on the basis of what is the contained in the Office Memorandum, therefore, they had a legitimate expectation that they would get the full benefits, which were actually promised in the Office Memorandum, and this may be borne in mind when resolving the controversy at hand. In other words, contention of the respondent/assesses is that, in fact, the respondent/ assessee may have set up hotels in urban area in the capital city of Dehradun, is of no relevance at all and what is relevant is; whether the hotel was set up within the termini of time, which is provided in Section 80-IC.

10. Mr. Pulak Raj Mullick, learned counsel would also point out that the respondent/assessees have made further investments, amounting to expansion within the meaning of the section and, therefore, any denial of the deduction under Section 80-IC would be productive of grave injustice besides being illegal. The Government has, in fact, circulated the concessional industrial package to the tourism department in the State of Uttarakhand. The District Tourism Development Officer wrote to the Assistant Income Tax Commissioner, Circle Dehradun as to whether the hotel in question, is entitled to the benefit, and further opined that in the light of the Tourism Policy of 2001 and the State Industrial Policy of 2003, new tourism units like hotels, inter alia, were eligible for the benefits for concession for a period of five years. It is further stated that the word “Ecotourism” is not defined anywhere in the Act. It is more importantly

contended that Entry 15 of the 14th Schedule, with which we are concerned, provides for Ecotourism including hotels, spas among other activities as entitled for the benefit of deduction. He would submit that by employment of the word 'including' the intent was clearly to expand the scope of the word 'Ecotourism' and he would rely on the case law, which we would advert at the appropriate stage. To buttress his arguments that the view taken by the tribunal does not call for any interference, he would in fact, submit that the Mimansa Rules of Interpretation may be invoked in this case and the thrust being on the hotel, among other activities, an undue emphasis should not be given to the word 'Eco' and rather the Court should discern the legislative intention by focusing on tourism. The business of running a hotel is associated with the concept of tourism and in realizing the tourism potential in the States of Uttarakhand and Himachal Pradesh and to encourage the activities associated with the tourism it is that the business of the hotels were sought to be encouraged. It is the contention, in fact that the only difference in the Office Memorandum dated 07.01.2003 and the item included in the 14th Schedule is the inclusion of the word 'including' and it does not make any difference. As far as the relevance placed on the Government of India's Policy statement in regard to Ecotourism, he would submit that it relates to Ecotourism in the protected areas and it may have a bearing on the issues to be decided. Still, further he would submit that doctrine of 'blue pencil' may be invoked in this case and in his attempt to do away with the word Ecotourism.

11. As far as arguments of Mr. Anil Jain, is concerned, he would draw our attention to the Assessment Order passed in

his case. He would submit that by way of answer to the query of the Assessing Officer, the following reply was devised by him in ITA No.1/16, same is reproduced hereunder:-

> **"5.0 Disallowance of deduction u/s 80IC of the I.T. Act, 1961**
> 5.1 As mentioned in the brief facts of the case, the assessee claimed deduction u/s 80IC of the I.T. Act, 1961 by commencing the operation of hotel in the A.Y. 2005-06. The assessee, vide query number 1 of Notice u/s 142(1) dated 02-12-2011 was requested to justify his claim of deduction u/s 80IC of the I.T. Act, 1961.
> 5.2 The assessee vide his reply dated furnished the following reply to the query raised for justifying the claim:
>
> *"With regard to claim of deduction u/s 80 80IC it is submitted that the hotel commenced operation in May 2004. The hotel is situated in state of Uttaranchal (now Uttarakhand). The hotel is an eco tourism hotel having proper ecological balance through good environmental management. The hotel has taken the under mentioned steps and measures required for being an eco tourism hotel.*
>
> a. ***GREEN BELT****-The total land area of the hotel is 4267.15 sq. mts. Of which more that 50% is green belt. A central park has been developed, in which the flowering and foliage, trees, shrubs have been planted along with suitable landscape. Green belt along the compound wall has been developed where 20 non deciduous, flowery and shady trees have been planted. The plantation of trees helps in maintaining proper ecological balance through greenery and god environment and are beneficial to the biological environment.*
> b. ***DISPOSAL OF SOLID WASTE/GARBAGE****- The hotel has a proper policy for disposal of solid waste by way of segregation of solid waste into biodegradable waste (viz. waste vegetables, chilkas of vegetables etc.) and non-biodegradable waste (viz., polythene bags etc.)*
>   *The biodegradable waste is converted into bio compost which is used as measure for gardening/plantation by treating the waste in underground pits within hotel premises. Further the biodegradable waste is utilized for compost making which is further used for horticulture purpose within the hotel complex through vermiculture process.*
>   *The non-biodegradable waste is compacted through compactor to reduce the volume of the waste and then dispatched to scrap. During monsoon season*

and some other unavoidable circumstances these solid non-biodegradable waste are transported to dumping sites earmarked by Nagar Palika.

(c) ***FUEL EMISSION**- There are no fugitive emission which enhance the ambient air quality. There is no air pollution and as such there will not be any negative impact on the air environment.*

(d) ***ROOF TOP RAIN WATER HARVESTING**- The hotel has a proper roof top rain water harvesting system through proper pipes to recharge the aquifer i.e. roof top water is routed into land to recharge the ground water. The hotel also has proper tanks to conserve and utilize rain water for irrigation etc. the area, owing to its high hydraulic gradient is ground water scarce and requires to be supplemented by surface/rain water. The rain water collected from the clean roof of the building is suitable for different uses. The water descending from the roofs of the building through rain pipe is stored to irrigate the green area. The rain water is routed into ground through soakage pits thereby not letting the water go into waste drainage.*

(e) ***ENERGY EFFICIENCY**-The hotel has been constructed and developed in a manner to provide good ventilation which reduce energy requirement.*

The hotel is using quality CFLs and LED lights which are manufactured from non-hazardous material for lighting purposes and which also consume less power and are more energy efficient.

All the lights and power points are shut down when not is use in order to conserve energy.

Use of Incandescent lamps and halogen lamps have been avoided and energy efficient compact fluorescent lamps have been used for all common areas.

The hotel has used 8MM thick, blue/grey reflective glasses in penetration during construction of hotel. These glass panels have high light transmission, but low solar heat inflow. This reduces the quality of heat inflow into the buildings, lessens cooling loads on air conditioners and induces energy saving.

Passive Lighting System-Large facing windows are the easiest and cheapest way to increase light in a building, since the south side of a building receives the most sunlight. An open design with glazed apertures. Light shelves and light pies can transmit sunlight into building interiors.

Passive Heating Systems-Absorption materials are built south facing walls to store heat during the day and then slowly release this heat at night. Sunspaces, glass rooms built on the south side of

the buildings, provide up to 60% of winter heating. Proper ventilation allows the heat from the sunspaces to circulate through the rest of the building.

(f) ***SOLAR ENERGY****-Solar panels are installed from producing hot water which will save significant electrical energy. The passive solar architecture is used for the maximum use of the solar energy.*

(g) ***WATER CONSERVATION****-Water conserving appliances are used by the hotel, such as low flow faucets, taps, water saving dual flush tanks in toilets, shower etc.*

The main source of water for the hotel is bore well. As per analysis of bore well water, the quality of ground water is quite good and is meeting the norms of drinking water class A as per national standard of drinking water.

(h) ***SEWAGE****-The domestic effluent is disposed through municipal sewer line. The WC waste goes into government/municipal sewerage system. The hotel also has sewage treatment plant whereby solid waste is converted into manure/ compost and liquid effluent/ water is utilized for watering of plants. As such the hotel has a proper system of sewage disposal and recycling without causing any damage to environment.*

(i) ***SOCIO-ECONOMIC DEVELOPMENT****-More than 70% of the employees of the hotel are local residents/residents of Uttarakhand.*

All purchases of food and beverages, consumables, etc. are made locally

Regular training programmes and awareness sessions for employees are held.

All these steps taken by the hotel have enabled the local people to supplement their income, employment increase of knowledge and thereby improving the quality of life of the local people.

(j) ***HEALTH AND SAFETY****-The hotel ensures to maintain optimum standard of health and hygiene and proper fire fighting system for safety purposes. This is evidenced by way of certification of hotel premises from Government Health Officer, Nagar Nigam, Dehradun.*

The hotel has installed a proper and latest fire fighting system including proper fire escape routes, adequate underground and overhead tanks, sprinkler pumps, fire alarm system as per ISI Codes, fire pumps, wet arisers, supply independent circuit, fire hydrant line, portable fire extinguishers of ISI specification etc.

The hotel has also obtained fire NOC from fire department, Dehradun.

(k) ***OTHER ECO-FRIENDLY MEASURES****-The hotel is plastic free, whereby no polythene bags are used by the hotel.*
The parking space is much more than require by MDDA or as per National Building Code. This helps in avoiding traffic congestion, noise and vibration in the hotel premises."

12. He would further submit that the Court may also consider the actual finding by the Assessing Officer. Same is reproduced hereunder:

> "5.5 The submissions of the assessee have been examined. The assessee has taken eco-friendly measures but the assessee established a hotel which is a stand alone hotel and not parcel of 'eco-tourism' actively/project. Therefore, deduction u/s 80IC of the I.T. Act, 1961 is not allowed to the assessee."

13. He would, therefore, submit that despite the finding that the assessee has taken Eco-friendly measures, the only reason for denying the benefits is that hotel is a stand-alone hotel and not a parcel of Ecotourism activity project. He would also emphasize that with regard to Thrust Industry in the Memorandum there is no reference to any geographical restrictions and having regard to the measures which have been taken by the assessee, nothing more remains, and even on the finding of the Assessing Officer, the denial of the benefit of the deduction, is patently unsustainable and, therefore, his case deserves differential treatment.

14. He also reiterated that it is a Thrust Industry and, therefore, the benefit of the deduction under Section 80-IC cannot be denied. It is also the case of the assessee that the subsidy was received; there is approval from the Pollution Control Board; there is also approval from District Tourism Department for exemption from luxury tax. The hotel has been classified as is exempted from luxury tax. He also drew

our attention to Section 80-IB of the Act and contended that in the said provision, Sub-clause 11C contemplates the concept of excluded areas whereas in Section 80-IC there is no clause excluding any area as such, therefore, if the hotel is located in Dehradun, it would not have in any manner detract from the availability of deduction under the said provision.

15. We are dealing with the appeals under Section 260-A of the Act. The appeal is successfully premised on the existence of a substantial question of law. The following question of law are raised:

1. Whether on the facts and in the circumstances of the case, the ITAT was justified in allowing the claim of deduction under sec.80-IC of the I.T. Act, 1961 by simply following the ITAT's decision in the case of Shri Bidhi Chand Singhal vs. ITO and that also without ascertaining that the assessee was issued NOC from Pollution Control Department?
2. Whether, on the facts and in the circumstances of the case, the ITAT was justified in allowing the claim of deduction under sec.80-IC of I.T. Act, 1961 without being satisfied that the assessee hotel was an eco-tourism hotel and not simply a commercial hotel located in a city following eco-friendly measures?

16. We have already referred to the order passed by the tribunal. The Income Tax Tribunal is the final fact finding authority under the scheme of the Act. The findings of fact in certain circumstances may give rise to a substantial question of law. We notice that the tribunal, in fact, has not laboured much on the facts of individual cases.

17. The Tribunal has essentially proceeded to dispose of the appeals in question by merely taking the view that in absence of the definition of Ecotourism, the hotel is to be construed as a hotel in respect of which there is a No Objection Certificate from the Pollution Control Board. The question to be considered is whether this is supportable.

18. The State of Uttarakhand is a hilly State for the most part. It is also called the Land of the Gods (Dev Bhoomi). It was formed by carving out the area from the former undivided State of Uttar Pradesh by the State Reorganization Act, 2000. The appointed date is 09.11.2000 and as per the appointed date the Act came into force on 09.11.2000. It was, therefore, a new State. The industrial activity as such, is mostly confined to the areas comprising plains, most part of which is located in Dehradun, Haridwar and Udham Singh Nagar. There are also industrial areas in certain other districts. It is true that the Government of India issued the Office Memorandum in the year 2002 as we have noticed. It did promise certain benefits of the industrial units, which are located in certain areas, which are specified therein, namely, industrial estates, etc., and also allowed the Government to issue further notification providing for areas within which if an industry is located, it would be entitled to the benefits. They are known as Areas Specific Benefits. It is equally true that the Office Memorandum would bear out the assessees in their argument that the Government of India contemplated benefits for Thrust Industries located in the States of Himachal Pradesh and Uttaranchal (later Uttarakhand). The benefits for the Thrust Industries were without any geographical restrictions. In other words, the Office Memorandum contemplate the Thrust Industry being located in any part of the State of Uttarakhand, inter alia,

entitling it to the benefits as we have already discussed. Therefore, the argument runs that whether it is located in a busy city like Dehradun or whether it is in the remote area in Chamoli or Uttarkashi, which are truly hilly areas, it hardly matters.

19. The other line of argument is that the words used in item 15 of 14th Schedule, contemplates the wider meaning being given to Ecotourism and it is for that purpose that the word 'including' was used after the word 'Ecotourism'. The use of the word 'includes' has engaged the attention of the Courts from time to time. We may in this context refer to the Principles of statutory interpretation by **Justice G.P. Singh's 12th Edition,** wherein it is inter alia, stated as follows:

> **a) Restrictive and extensive definition**
>
> The Legislature has power to define a word even artificially. So the definition of a word in the definition section may either be restrictive of its ordinary meaning or it may be extensive of the same. When a word is defined to 'mean' such and such, the definition is *prima facie* restrictive and exhaustive; whereas, where the word defined is declared to 'include' such and such, the definition is *prima facie* extensive. When by an Amending Act, the word 'includes' was substituted for the word 'means' in a definition section, it was held that the intention was to make it more extensive. Further, a definition may be in the form of 'means and includes', where again the definition is exhaustive; on the other hand, if a word is defined 'to apply to and include', the definition is understood as extensive. The use of word 'any', e.g. any building also connotes extension for 'any' is a word of very wide meaning and *prima facie* the use of it excludes limitation."
>
> But as stated earlier the word include may in exceptional cases be construed as equivalent to 'mean and include'. Entry 22 added by the Gujarat Government to Part I of the Schedule to the Minimum Wages Act, 1948 furnished an illustration of such use. The entry refers to 'Employment in Potteries Industries' and is followed by an explanation which reads: 'For the purpose of this entry potteries industry

> *includes* the manufacture of the following articles of pottery namely-(a) Crockery, (b) Sanitary appliances, (c) Refractories, (d) Jars, (e) Electrical accessories, (f) Hospital wares, (g) Textile accessories, (h) Toys, (i) Glazed tiles'. Construing the explanation the Supreme Court held that the items included in it were plainly comprised in the expression 'potteries industry' which showed that the word 'includes' was not used to extend the normal meaning of this expression. For the same reason it was clear that the explanation was not added to indicate by way of abundant caution that the items included in it were comprised in 'potteries industry'. The conclusion was reached that the word 'includes' was used in the explanation in the sense of 'means' and the definition provided by the explanation was exhaustive. It was, therefore, held that Mangalore pattern roofing tiles manufactories were not covered by entry 22 as they were not included in the explanation. Similarly in construing the definition of 'Prize Chit' as contained in section 2(e) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 the Supreme Court held that the inclusive definition was not intended to expand the meaning of 'Prize Chit' to cover all transactions or arrangements of the nature of prize chits by whatever name called and that a recurring deposit scheme without any element of prize was not a prize chit as defined in the Act. And in construing section 2(3) of the Rating Act, 1971 which defines 'Livestock' to include any mammal or bird kept for the production of food or wool or for the purpose of its use in the farming of land, the word livestock was not given the wide meaning (in contradiction to deadstock) to include any animal whatsoever and was held not to extend to thorough bred horses not kept for use in the farming of land. In holding so LORD KEITH observed: "There can be no doubt that in some cases the language of an inclusive definition considered with the general context, can have the effect that the ordinary general meaning of a word or expression is to some extent cut down. The word 'includes in a particular context may only mean 'comprises' or 'consists of'.

20. The learned counsel for the assessee Mr. Pulak Raj Mullick, in fact, particularly emphasized on the decision of the Hon'ble Apex Court in the case of **Ponds India Ltd. vs. Commr. Of Trade Tax, Lucknow** reported in **2008(227) E.L.T. 497 (SC)**. There the Court was dealing with the case

under the U.P. Sales Tax Act and the issue was whether petroleum jelly is a drug or a cosmetic within the meaning of the said Act. The Court inter alia, proceeded to hold as follows:-

> "15. Indisputably, a licence has been granted to the appellant under the provisions of the Act.
>
> A drug as defined in Section 3(b) thereof would not only include a medicine which is used for external use of human beings, but if used for prevention of any disease or disorder in human being, shall also come within the purview thereof. The said definition is an extensive one. It even applies to preparations applied on human body for the purpose of killing insects like mosquitoes, which per se does not have any medicinal or any value for during any disease or disorder in human beings.
>
> We may furthermore notice that Parliament consciously used a restrictive meaning while defining the term "cosmetic" but an extensive meaning has been given to the word "drug".
>
> The effect of such inclusive definition vis-à-vis restrictive definition is well known. In Hamdard (Wakf) Laboratories v. Dy. Labour Commissioner and others [(2007) 5 SCC 281], this court held:
>
> > "33. When an interpretation clause uses the word "includes", it is prima facie extensive. When it uses the word "means and includes', it will afford an exhaustive explanation to the meaning which for the purposes of the Act must invariably be attached to the word or expression."
>
> Almost to the same effect is the decision of this Court in N.D.P. Namboodripad (Dead) by Lrs. Union of India and others [(2007) 4 SCC 502], wherein the law was stated in the following terms:
>
> > "18. The word "includes" has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word "include'. Webster's Dictionary defines the word "include" as synonymous with "comprise" or "contain". Illustrated Oxford Dictionary defines the word "include" as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word "includes" as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something elese; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word

"includes" is also used to connote a specific meaning, that is, as :means and includes" or "comprises" or "consists of".

Yet again in Bharat Coop. Bank (Mumbai) Ltd. v. Coop Bank Employees Union [(2007) 4 SCC 685], it was held;

"... It is trite to say that when in the definition clause given in any statue the word "means" is used, what follows is intended to speak exhaustively. When the word "means' is used in the definition, to borrow the words of Lord Esher, m.R. in Gough v. Gough it is a "hard-and-fast" definition and no meaning other than that which is put in the definition can be assigned to the same. (Also see P. Kasillngam v. P.S.G. College of Technology). On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but no exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."

Yet again in Commercial taxation Officer, Udaipur v. Rajasthan Taxchem Ltd. [(2007]) 3 SCC 124], it was held;

22. We have already extracted the definition of raw material under Section 2(34) which specifically includes fuel required for the purpose of manufacture as raw material. The word includes gives a wider meaning to the words or phrases in the statute. The word includes is usually used in the interpretation clause in order to enlarge the meaning of the words in the statute. When the word include is used in the words or phrases, it must be construed as comprehending not only such things as they signify according to their nature and impact but also those things which the interpretation clause declares they shall include. There is no dispute in the instant case that the diesel and lubricant is used to generate electricity through DG sets which is admittedly used for the purpose of manufacturing yarn. Thus, it is seen that as diesel is specifically and intentionally included in the definition of raw material by the legislature, the question that whether it is directly or indirectly used in the process of manufacture is irrelevant as argued by Mr Sushil Kumar Jain."

In Associated Indem Mechanical (P) Ltd. Vs. W.B. Small Industries Development Corporation Ltd. and Others [(2007) 3 SCC 607], this Court held;

"13. As the language shows, the definition of the word "premises" as given in Section 2(c) of the Act is a very comprehensive one and it not only means any

> building or hut or part of a building or hut and a seat in a room, let separately, but also includes godowns, gardens and outhouses appurtenant thereto and also any furniture supplied or any fittings or fixtures affixed for the use of the tenant in such building, hut or seat in a room, as the case may be."

21. It is therefore, difficult to agree with Mr. Dwivedi that a medicinal preparation must be one which has the effect of curing a disease. While interpreting an entry in a taxing statute, the Court's role would be to consider the effect thereof, upon considering the same from different angles. Different tests are laid down for interpretation of an entry in a taxing statute namely dictionary meaning, technical meaning, users point of view, popular meaning etc.

It is true that the Court must bear in mind the precise purpose for which the statute has been enacted, namely, herein for the purpose of collection of tax, but the same by itself would not mean that an assessee would be made to pay tax although he is not liable therefor, or to pay higher rate of tax when is liable to pay at a lower rate. An exemption notification may require strict construction, but where a statute merely provides for different rates of tax, application of the principles of strict construction may not be appropriate.

Whether a product would be a drug or a cosmetic sometimes poses a difficult question and, thus, answer thereto may not be easy. For the said purpose, the Court may not only be required to consider the contents thereof, but also the history of the entry, the purpose for which the product is used, the manner in which it has been dealt with under the relevant statute as also the interpretation thereof by the implementing authorities."

24. ".....Wikipedia, like all other external aids to construction, like dictionaries etc, is not an authentic source, although the same may be looked at for the purpose of gathering information. Where an express statutory definition of a word exists, a Wiki definition cannot be preferred. It cannot normally be used for the purpose of interpreting a taxing statute or classification of a product vis-à-vis an entry in statute.

However, as a source of authority, Wikipedia is frequently cited by judges around the world. This is not restricted to India alone. The New York Times reports that beginning in 2004, more than 100 opinion in the States have cited Wikipedia, including 13 from federal appeals courts.

Is this a good thing? There's a split of authority. Let us notice some.

- Said the Seventh Circuit's Judge Posner, who recently cited the online encyclopedia in this opinion: Wikipedia is a terrific resource.....Partly because it so convenient, it often has been updated recently and is very accurate. He added: It wouldn't be right to use it in a critical issue. If the safety of a product is at issue, you wouldn't look it up in Wikipedia.
- Cass Suntein, a visiting professor at Harvard Law who once fixed an error on Posner's Wikipedia entry: I love Wikipedia, but I don't think it is yet time to cite it in judicial decisions…it doesn't have quality control. He told the Times that "if judges use Wikipedia you might introduce opportunistic editing" to influence the outcome of cases.
- Kenneth Ryesky, a New York tax attorney, says "citation of an inherently unstable source such as Wikipedia can undermine the foundation not only of the judicial opinion in which Wikipedia is cited, but of the future briefs and judicial opinions which in turn use that judicial opinion as authority.
- Stephen Gillers, NYU law professor and legal ethics guru: The most critical fact is public acceptance, including the litigants, he said. A judge should not use Wikipedia when the public is not prepared to accept it as authority. He said it's best used for "soft facts".
- Lawerance Lessig, a Standford law professor urges using a system such www.webcitation.org that captures in time online sources like Wikipedia, so that a reader sees a "stable reference"-i.e., the same material that the writer saw.

These points must be kept in mind by us when we intend to rely on Wikipedia as a source of authority.

21. We may also notice the decision of the Hon'ble Apex Court in the case of **Ispat Industries Ltd. vs.**

Commissioner of Customs, Mumbai reported in **2006 (202) E.L.T 561 (S.C.).** There the Court was dealing with case under the Customs Traffic Act. In the course of the judgment, the Court lamented the ignoring of the Mimansa Rules of Interpretation, and held as follows:

> "18. Legal fictions are well-known in law. In the oft-quoted passage of Lord Asquith in East End Dwelling Co. Ltd. vs. Finsbury Borough Council (1951) 2 All ER 587, it was observed :
>
> > "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it -. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".
>
> 32. It may be mentioned that the Mimansa Rules of Interpretation were our traditional principles of interpretation laid down by Jaimini in the 5th Century B.C. whose Sutras were explained by Shabar, Kumarila Bhatta, Prabhakar, etc. The Mimansa Rules of Interpretation were used in our country for at least 2500 years, whereas Maxwell's First Edition was published only in 1875. These Mimansa Principles are very rational and logical and they were regularly used by our great jurists like Vijnaneshwara (author of Mitakshara), Jimutvahana (author of Dayabhaga), Nanda Pandit, etc. whenever they found any conflict between the various Smritis or any ambiguity or incongruity therein. There is no reason why we cannot use these principles on appropriate occasions even today. However, it is a matter of deep regret that these principles have rarely been used in our law Courts. It is nowhere mentioned in our Constitution or any other law that only Maxwell's Principles of Interpretation can be used by the Court. We can use any system of interpretation which helps us solve a difficulty. In certain situations Maxwell's principles would be more appropriate, while in other situations the Mimansa principles may be more suitable. One of the Mimansa principles is the Gunapradhan Axiom, and since we are utilizing it in this judgment we may describe it in some detail. 'Guna' means subordinate or accessory,

while 'Pradhan' means principal. The Gunapradhan Axiom states :

> "If a word or sentence purporting to express a subordinate idea clashes with the principal idea, the former must be adjusted to the latter or must be disregarded altogether".

22. We may also refer to the judgment of Hon'ble Apex Court in **Civil Appeal No.4327 of 2006 "Beed District Central Co-Operative Bank Ltd. vs. State of Maharashtra and Others".** Therein the Court referred to the 'doctrine of blue pencil', and held as follows:-

> "The 'doctrine of blue pencil' was evolved by the English and American Courts. In Halsbury's Laws of England (4th Edn. Vol.9), p.297, para 430, it is stated:
>
> "430. Severance of illegal and void provisions - A contract will rarely be totally illegal or void and certain parts of it may be entirely lawful in themselves. The question therefore arises whether the illegal or void parts may be separated or "severed" from the contract and the rest of the contract enforced without them. Nearly all the cases arise in the context of restraint of trade, but the following principles are applicable to contracts in general"
>
> In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn. 2005, Vol. l,p.553-554, it is stated:
>
> "Blue pencil doctrine (test). A judicial standard for deciding whether to invalidate the whole contract or only the offending words. Under this standard, only the offending words are invalidated if it would be possible to delete them simply by running a blue pencil through them, as opposed to changing, adding, or rearranging words. (Black, 7th Edn., 1999) This doctrine holds that if Courts can render an unreasonable restraint reasonable by scratching out the offensive portions of the covenant, they should do so and then enforce the remainder. Traditionally, the doctrine is applicable only if the covenant in question is applicable, so that the unreasonable portions may be separated. E.P.I, of Cleveland, Inc. v. Basler, 12 Ohio App2d 16:230 NE2d 552, 556.

> Blue pencil rule/test. - Legal theory that permits a judge to limit unreasonable aspects of a covenant not to compete.
>
> Severance of contract. - "severance can be effected when the part severed can be removed by running a blue pencil through it without affording the remaining part. Attwood v. Lamont, (1920) 3 K 571 (Banking) A rule in contracts a Court may strike parts of a covenant not to compete in order to make the covenant reasonable. (Merriam Webster) Phrase referring to severance (q.v.) of contract. "Severance can be effected when the part severed can be removed by running a blue pencil through it" without affording the remaining part. Attwood v. Lamont, (1920) 3 KB 571. (Banking)".
>
> We, however, are of the opinion that the said doctrine cannot be said to have any application whatsoever in the instant case. Undoubtedly, the Payment of Gratuity Act is a beneficial statute. When two views are possible, having regard to the purpose, the Act seeks to achieve being a social welfare legislation, it may be construed in favour of the workman. However, it is also trite that only because a statute is beneficent in nature, the same would not mean that it should be construed in favour of the workmen only although they are not entitled to benefits thereof. (See Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries, AIR (1985) SC 278)."

23. We may also refer, in this context, to the judgment of Hon'ble Apex Court passed by the Constitution Bench in the case of **Godfrey Phillips India Ltd. & another vs. State of U.P. & others** reported in **(2005) 2 SCC 515.** There the question arose in the context of Entry 62 of list 2 of the 7th Schedule of the Constitution and the question arose whether as to what is the concept of the word 'luxuries' figuring therein. Entry 62 of list 2 provides for legislative power to impose taxes on luxuries including taxes on entertainments, amusements, betting and gambling. The Court in the course of its judgment, inter alia, held as follows:

“73. Having rejected the second premise contended for by Mr. Salve, the next question is whether the language of Entry 62 List II would resolve the issue. The juxtaposition of the different taxes within Entry 62 itself is in our view of particular significance. The entry speaks of "taxes on luxuries including taxes on entertainments, amusements, betting and gambling". The word "including" must be given some meaning. In ordinary parlance it indicates that what follows the word "including" comprises or is contained in or is a part of the whole of the word preceding. The nature of the included items would not only partake of the character of the whole, but may be construed as clarificatory of the whole.

74. It has also been held that the word 'includes' may in certain contexts be a word of limitation (South Gujarat Roofing Tiles Manufacturers vs. State of Gujarat (1976) 4 SCC 601). In the context of Entry 62 of List II this would not mean that the word 'luxuries' would be restricted to entertainments, amusements, betting and gambling but would only emphasise the attribute which is common to the group. If luxuries is understood as meaning something which is purely for enjoyment and beyond the necessities of life, there can be no doubt that entertainments, amusements, betting and gambling would come within such understanding. Additionally, entertainments, amusements, betting and gambling are all activities. 'Luxuries' is also capable of meaning an activity and has primarily and traditionally been defined as such. It is only derivatively and recently used to connote an article of luxury. One can assume that the coupling of these taxes under one entry was not fortuitous but because of these common characteristics.

75. Where two or more words are susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take, as it were, their colour from and are qualified by each other, the meaning of the general word being restricted to a sense analogous to that of the less general. As said in Maxwell on the Interpretation of Statues 12th Edn. P.289.

> "Words, and particularly general words, cannot be read in isolation; their colour and their content are derived from their context ."

76. Put in other words the included words may be clarificatory or illustrative of the general word. Thus in U.P. State v. Raja Anand; (1967) 1 SCR 362, while

construing Art. 31A (2) as enacted by the Constitution (Seventeenth Amendment) Act, 1964 the relevant excerpt of which read as:-

> "31-A.(2) In this article,-
>
> (a) the expression 'estate' shall in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include-
>
> (i) -(ii) * * *
>
> (iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agriculture labourers and village artisans;

this Court said: (SCR p.368 C)

> "In our opinion the word "including" is intended to clarify or explain the concept of land held or let for purposes ancillary to agriculture. The idea seems to be to remove any doubts on the point whether waste land or forest land could be held to be capable of being held or let for purposes ancillary to agriculture."

83. Hence on an application of general principles of interpretation, we would hold that the word "luxuries" in Entry 62 of List II means the activity of enjoyment of or indulgence in that which is costly or which is generally recognized as being beyond the necessary requirements of an average member of society and not articles of luxury."

24. While on the subject of NOSCITUR A SOCIIS, Mr. H.M. Bhatia, learned counsel for the appellant, drew our attention to the following commentary in the book **BROOMS'S LEGAL MAXIMS.**

"It is a rule laid down by Lord Bacon that copulatio verborum indicat acceptationem in eodum sensu-the coupling of words together shows that they are to be understood in the same sense. And, where the meaning of a particular word is doubtful or obscure, or where a particular expression when taken singly is inoperative, the intention of the party who used it may frequently be ascertained by looking at adjoining words, or at expressions occurring in other parts of the same instrument, for qua non valeant singular juncta juvant-words which are ineffective when taken singly operate when taken conjointly: one provision of

> a deed, or other instrument, must be construed by the bearing it will have upon another."

25. It is in the light of the above discussion that we must now proceed to appreciate the contentions of the parties. We are dealing with the provision in the Act, which provides for a benefit in the form of a deduction. Therefore, this is provision, which calls for strict interpretation. No doubt, we must also not be oblivious to the fact that the Government of India intended to promote certain activities in the State, having regard to the factors that it was fledgling State struggling to stand on its feet and to provide concessions in various forms so that the economy of the State may grow. It is bearing in mind both these aspects that we undoubtedly construe the provision in question.

26. Ordinarily, the use of the word 'include' would mean an extension of the meaning. A general word followed by specified categories would mean that the Legislature includes within the scope of the provisions, things or persons or circumstances, which may ordinarily not come within the scope of the general word and thereby it would be a case where the meaning of the main words or the word with which the Section begins receives an expansive treatment at the hands of the law giver. It may also be a case where the use of the word "include", will have the effect of the word giving an exhaustive meaning, that is, it may have effect of giving the word an exclusive definition, which would be exhaustive. In other words, use of the word 'includes' could mean that it means nothing more than what is contemplated. In such a case, it would take the flavour of a definition clause which uses "means and includes". The intention of the word 'includes' or including could also bear

a restrictive meaning. It would depend upon the context of the provision. See in this regard the decision of the Hon'ble Apex Court in **Godfrey Philip's** case.

27. We may not be justified in accepting Shri Pulak Raj Mullick's contention that this is a case where there is a fiction introduced. It is true that when a fiction is introduced in law, the Court's mind must not boggle when it comes to give effect to the fiction but it is not a case of a fiction.

28. In this context, we must examine the ideas of Ecotourism as it is understood. We have already adverted to the Government of India's understanding of Ecotourism in relation to the protected areas, in the judgment. We have also referred to some extracts from Wikipedia, which we do note, may be fraught with the danger, which has been pointed out by the Hon'ble Apex Court and which we have already adverted to. Nonetheless, we could safely refer to the following as it appears to accord with the understanding of the concept by the Government of India.

29. We may also notice that Ecotourism, in fact, is defined in the Geographical Dictionary of Oxford University Press as "<u>Development and management of tourism such that the environment is preserved</u>. The income from tourism adds to the investment into the landscape conservation". In Merriam Webster's Online dictionary, Ecotourism is defined as the practice of <u>touring natural habitats in a manner meant to minimize ecological impact</u>. We also notice that Assessing Officer has referred to the definition given by the State Government in its Ecotourism Planning, Development and Management Document, as "<u>Eco Tourism is responsible</u>

travel to natural areas that conserves the environment and sustains the well being of local people".

30. We remind ourselves that a Court must always guard against an interpretation which will render any part of any provision redundant or superfluous**.** In regard to the States of Uttarakhand and Himachal Pradesh, we must, therefore, proceed on the basis that the word "Ecotourism", has been carefully and guardedly chosen in contradistinction to the word "tourism". Quite clearly Ecotourism cannot be the same as tourism. Mainstream tourism is certainly a larger concept and it would encompass within itself Ecotourism. The use of the word "Ecotourism" in the context of the States of Himachal Pradesh and Uttarakhand is clearly object driven and contextually apposite for the reason that both the States are hilly States and had and have vast untapped potential for natural and responsible tourism, which can be treated as Ecotourism. The word "Eco" is defined in Concise Oxford English Dictionary as "representing Ecology". Ecology, in turn, is defined as "the branch of biology concerned with the relations of organisms to one another and to their physical surroundings".

31. We must notice that the State of Uttarakhand is broadly dividable into the hilly areas and the plain areas. Can it not be said that the intention of the law giver was to promote Ecotourism, and towards that end, to encourage the setting up of hotels, spas, amusement parks and sites close to the nature in areas reflecting pristine beauty? Could it have been the intention of the Legislature to provide a right to a hotelier to claim deduction by setting up a hotel in a completely urban area, which is far remote from any signs of

ecological beauty and natural surroundings, for which Uttarakhand is justly famous? In this regard, we must address the argument of the learned counsel for the respondent Shri Pulak Raj Mullick, based on the absence of any geographical restrictions in regard to the Thrust Industries. We must notice that it appears to us to be more probable that the intention was to free the Thrust Industries from the geographical restrictions, which were relevant in regard to the industrial units, which are referred to in clause 3.1.(i). In regard to the same, undoubtedly, the geographical restrictions were applicable. In regard to the Thrust Industries when it was said in the Office Memorandum that it will be without geographical restrictions, and subsequently Section 80-IC was inserted, no doubt, without any geographical restrictions, we are left to ponder and answer the question as to whether such restrictions would not inevitably flow from the company the word hotel keeps and the use of the word “including”.

32. One way of looking, no doubt, is that any hotel be it a five star hotel, which harnesses the most modern methods, and with little regard for the environment, but boosts tourism, would be entitled to benefit under Section 80-IC. The other way to look at this is that both in terms of site of location, and also for the manner, in which the hotel business is carried out, it should answer the description of a nature friendly, Eco-friendly hotel. Some of the other criteria, which are relevant would be, whether in the context of its business, it causes no harm or the least harm to its surroundings; whether it provides employment to the local population; whether it develops local culture and arts; does it produce the least impact on environment; whether it

resorts to recycling; what steps it takes towards the energy efficiency and water conservation; does it enhance the cultural and economic set up and integrity of local people; does it promote sustainable use of biodiversity and conservation of cultural diversity? In one case, [ITA No.09 of 2012], in answer to the query, the assessee would write that the hotel is connected to the City sewer system. Solid garbage waste, it is answered, is disposed of in the city garbage container. We have no hesitation in saying that the fact that it is connected to the City sewer system and that the solid garbage waste is disposed of in the city garbage container, can hardly make it a hotel fulfilling the criteria of an Ecotourism hotel, if such a requirement is actually there, which issue we will address.

33. We are of the view that it is not the intention of the Legislature that any person who sets up a hotel within the time limits indicated in the State of Uttarakhand, without any regard to the exact location, and the manner in which it operates, its impact on the nature (environment), its relationship with the local people (local community), what it does for the people there, indiscriminately, all such hotels should be entitled to claim the benefit. It is true that the word “Ecotourism” includes hotels among other activities. We would think that in the context of this case, we would not be unjustified if we interpret the word “hotel” taking color and assistance from the word “Ecotourism”. The word “Ecotourism”, it must be noted, appears at the beginning of the provision. Obviously confronted with the obstacle it causes to the acceptance of the respondents argument, Mimansa Principles invoked in the decision of Ispat’s case are relied on by Shri Pulak Raj Mullick. We have already

extracted the relevant passage. Even applying the Mimansa Principles, we are at a total loss as to how any assistance would be derived from the principles laid down in the Mimansa Principle of Interpretation. The argument appears to be that subordinate accessory must be rendered subservient to the principle. There can be no quarrel with the same but that involves an answer to the question which is the principle. In fact, the acceptance of the assessee's argument would render it necessary for us to delete the word "Eco".

34. We would think that neither the blue pencil theory nor the Mimansa theory can be of any assistance to the assessee. The blue pencil theory is premised on the principle of severance and it is true that it is evolved to separate that which is illegal from that which would pass muster. In such circumstances, it is at the heart of the doctrine of severability. We can have no quarrel with the said principles, but its application to the facts of this case is totally without foundation when the Legislature has deliberately intended Ecotourism to be at the heart of its decision to give a deduction. We are at a loss as to how it can be itself done away in order to provide for deduction to a hotel, which is merely engaged in tourism and not Ecotourism. In other words, we are of the view that in the setting in which Entry 15 of 14th Schedule appears**,** it should yield the following result. Only hotels, which were setup as Ecotourism units or having set up as Ecotourism or units, were expanded as such, would be entitled to the benefit of 80-IC. We would think that the soul of the provision is Ecotourism. Various forms, in which Ecotourism may be practised and operated, are enumerated after the general word "Ecotourism". The

activities mentioned specifically must share one common feature, i.e., they must be pursued as part of Ecotourism. This in our humble view is the interpretation, which would do justice to the words, the context and object of the statute. Certainly, the mere procurement of a No Objection from the Pollution Control Board cannot be determinative of a question, whether the hotel fulfills the requirement under Section 80-IC of the Act. May be, it is not in dispute, in fact, according to Shri Pulak Raj Mullick that for all hotels of a particular type, satisfying a particular requirement, no objection is required from the Pollution Control Board. In this context, we bear in mind the argument of Shri H.M. Bhatia, that Pollution Control Board actually gives no objection consent to operate in the context of air and water Pollution. By no means, can this be the sole determinant of the question, as to whether the hotel is engaged in Ecotourism.

35. Therefore, necessarily the order passed by the Tribunal cannot be sustained. The receipt of the subsidy cannot be a hurdle in our taking the view, which we are taking as we are called upon to decide the actual scope of the provision in this appeal. While we do not discount the fact that subsidy may have been given the actual interpretation of the provision is a task, which we cannot abdicate.

36. Even regarding the sites of the activities, we would think that it must have something to do with areas close to nature. No doubt, in the State of Uttarakhand, the area of natural beauty and areas close to nature, often overlapped in close proximity with developed areas. These are all matters we would leave to the authority. In view of the same,

the order of the tribunal cannot be sustained and the matter must be redone. Accordingly, the impugned orders in all these cases will stand set aside. A request is made by the learned counsel for the assessee that if the matter is set aside and remanded, it be remanded not to the Tribunal but to the Assessing Officer. Learned counsel for the revenue Mr. H.M. Bhatia does not object to this course of action. In such circumstances, in view of the fact that the matter must be redone, we set aside the impugned orders. The matter is remanded back to the Assessing Officer, who will afford opportunity to all the Assessees and pass fresh orders taking note of the observations, which we have made.

37. The answer to the substantial question of law no.1 is given in favour of the revenue/appellant by holding that merely because a No Objection Certificate has been obtained from the Pollution Control Board, the conditions under Section 80-IC will not be fulfilled.

38. In view of the above, the appeals stand disposed of.

(V.K. Bist, J.)	**(K.M. Joseph, C. J.)**
16.06.2016	16.06.2016

Arti/Rajni