

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 5722/DEL/2016 ( A.Y 2012-13)**

Ramesh Bhatia (HUF) 17/18, 1 <sup>st</sup> Floor, East Punjabi Bagh New Delhi AAHHR0534F <b>PAN: AACCT8092L</b> <b>(APPELLANT)</b>	Vs	ITO Ward-41 (3) New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Sunil Arora, CA</b>
<b>Respondent by</b>	<b>Ms. Rakhi Vimal, Sr DR</b>

<b>Date of Hearing</b>	<b>15.07.2020</b>
<b>Date of Pronouncement</b>	<b>24.08.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 29/09/2016 passed by CIT(A)-14, New Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

*“1. Under the facts and circumstances of the case, the ld. First Appellate Authority has grossly erred in affirming the action of ld. A.O. disallowing the deduction amounting Rs.56,03,969 u/s 801D of the Act, which is grossly injudicious, unwarranted, against the facts of the case and bad at law.*

*2. Under the facts and circumstances of the case, the ld. First Appellate Authority has grossly erred in affirming the action of ld. A.O. disallowing the deduction amounting Rs.56,03,969 u/s 80ID of the Act, when the assessee has duly complied with all the conditions specified under the provisions of the*

*aforesaid section.*

*3. Under the facts and circumstances of the case, the ld. First Appellate Authority has grossly erred in concluding that the assessee has failed to fulfill all the conditions laid down under sub section (3) of section 80ID of the Act, which is grossly injudicious, unwarranted, against the facts of the case and untenable at law.”*

3. The assessee is engaged in the business of running of Hotels under the name & style of SIRIS 18. During the year under consideration, the assessee has run two Hotels under the name SIRIS 18 Gurgaon and SIRIS 18 Agra. The assessee filed its return of income for the year under consideration on 30.09.2012 declaring total income of Rs. 5,82,810/- after claiming deduction u/s 80ID of the Act amounting to Rs. 56,03,969/- in respect of profit derived from Hotel SIRIS 18 Agra. The case of the assessee was selected for scrutiny and the Assessing Officer vide his order dated 16.03.2015 passed u/s 143(3) of the Act, disallowed the claim of deduction u/s 80ID of the Act amounting to Rs. 56,03,969/-

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee is entitled to the deduction of an amount equal to hundred per cent of the profits and gains derived from business of hotel for five consecutive assessment years beginning from the initial assessment year. The Ld. AR submitted that the hotel should fulfill certain conditions for claiming the said deduction. Firstly, the hotel from which the said income has been received should be either located in the specified district having a World Heritage Site III or the said hotel should be a two star, three star or four star category as classified by the Central Government. Secondly, the said hotel should have been constructed and has started or start functioning at any time during the period beginning on the 1st day of April

2008 and ending on the 31st day of March 2013. Thirdly, the said business is not formed by the splitting up, or the reconstruction, of a business already in existence. Fourthly, the eligible business is not formed by the transfer to a new business of machinery or plant previously used for any purpose. Fifthly, the eligible business is not formed by the transfer to a new business of building previously used as a hotel or a convention center, as the case may be. The Ld. AR submitted that the assessee has fulfilled all the conditions enumerated in section 80ID and the said deduction should be allowed to the assessee. The Ld. AR further submitted that from an analysis of Section 80ID, it emerges that the exemption is not for a builder who develops the hotel and his profit from development are not entitled to exemption. Similarly a contractor who is constructing the building is also not entitled to exemption u/s 80ID. Even the owner of a hotel property who receives lease or rent is also not entitled to exemption u/s 80ID. Exemption u/s 80ID is available only on the profits derived from operating the said hotel. The Ld. AR submitted that Section does not provide that the assessee should be the builder or owner of the said property. The primary reason for which the Assessing Officer has disallowed the deduction to the assessee is that during the F.Y. 2008-09, 'Hotel Rani Mahal' was operated there by Mr. Bharti Sehgal. The said allegation of the Assessing Officer is factually incorrect as the property was constructed by Mr. Bharti Sehgal but the same was never operated by him which is evident from the copy of assessment order dated 18.05.2012 passed u/s 28 of the UP VAT Act, 2008 in the case of Hotel Rani Mahal. The Ld. AR further submitted that without prejudice to the aforesaid submission the assessee would also like to clarify that once the property/hotel has come into existence between 01/04/2008 & 31/03/2013 and the income is derived therefrom by operating the said hotel then the exemption is available to the assessee. The Ld. AR further submitted that even if the person, say 'X' who is operating and deriving the income therefrom changes by transferring the said property or operations to someone else person, say 'Y' then even in such a situation the exemption u/s 80ID will be available to the new assessee 'Y' in this case. The exemption in

Section 80ID is property or the business specific and not the assessee specific. The Section gives exemption to the eligible business and not to an eligible assessee. The restriction contained in clause (i),(ii) & (iii)of Section 80ID(3) is to prohibit properties & businesses existing prior to 1/4/2008 claiming exemption by transferring the same. The Ld. AR further submits that Section 80ID provides for exemption from taxability of profits derived from the eligible business which has come into existence after 01/04/2008 and before 31/03/2013. Therefore, irrespective of the person who is operating the same, the exemption u/s 80ID cannot be denied to the new incumbent of such property even if such property has been transferred after 01/04/2008. The Ld. AR relied upon the ruling of Hon'ble Allahabad High Court in the case of Commissioner of income tax, Ghaziabad v. Prisma Electronics [2014] 51 taxmann.com 77. The Ld. AR also relied upon the decision of the Hon'ble Karnataka High court in the case of Commissioner of Income- tax, Bangalore v. WeP Peripherals Ltd. [2014] 44 taxmann.com 273. Further the Ld. AR also relied upon the letter no. F.No. 15/5/63-IT (A-I) dated 13/12/1963 wherein the CBDT has clarified that the successor will be entitled to benefit for the unexpired period of 5 years provided the undertaking is taken over as a running concern. The Ld. AR therefore prays that the exemption u/s 80ID has been wrongly denied by the revenue and appeals of the assessee be allowed.

6. The Ld. DR submitted that as per the facts of the case, neither there is any difficulty in understanding the language of the statute nor any complex interpretation of Section 80ID involved. Rather simply, the assessee has violated the provisions of the Act, and interpreted the Act according to his own benefits. Section 80ID of the Act provides for a five year tax holiday to new hotels of two, three and four star categories and convention centers. The Finance Act, 2008 vide CBDT Circular No 1/2009 dated 27.03.2009 extended the scope of tax benefits under the provisions of Section 80ID extended specified districts having a World Heritage Site, including Agra, UP, to new

hotels of two, three and four stars categories from AY 2009-10. The assessee has initially violated the provisions of the Act by claiming deduction u/s 80ID for the AYs 2009-10 and 2010-11 without obtaining the two star categorization. In fact the major thrust of the Section is that the tax benefits shall be available only to new hotels, have been wrongly interpreted and assessee wrongly claiming deduction u/s 80ID in respect of hotel formed by splitting, reconstruction, transfer of an old hotel by renaming into a new hotel. Therefore, all clauses of Section 80ID have been violated and inaccurate particulars of income have been filed and true income has been concealed. As per the Section 80ID, the emphasis is on formation of new hotel and not on use of existing hotel. Therefore, it is not transfer of building or material or new ownership, but the one which can be held to have resulted in formation of the undertaking, than there is not an existence of new hotel. In this case, even the assessee has run the hotel on rent during FY 2008-09 (vide lease/rent deed dated 01.01.2008) before formation of New Hotel further strengthens it. The part played by the assessee by taking the building on lease during F.Y. 2008-09 was dominant in formation of the new hotel during F.Y. 2010-11 at the very same place further strengthens the fact that existing hotel was split, reconstructed and renamed for availing benefit u/s 80ID of the Act. It is proceeded on basis that once lease amounted to transfer, the assessee became ineligible from claiming any exemption for constructing new hotel at the very same premises. The Act of conversion of lease hold hotel under the name and style of Hotel Rani Mahal, into new name SIRIS 18 Agra is clearly a case where a new undertaking is established in premises taken on lease then it, always, amounts to formation of the undertaking by transfer of the building previously used for running a Hotel purpose. The Ld. DR submitted that it was intended to connote that the body of the Hotel or its shape did come up in consequence of transfer of building, machinery or plant used previously for business purpose. In other words building, machinery or plant used previously in other business should not result or from basis of information of another undertaking with new name given to the already existing one. The Ld. DR further submitted

that vital factors in determining the fulfillment of eligibility conditions laid down under the provisions of Section 80ID(3) of the Act and nature of business module adopted by the assessee to commence its operation is directly contradictory to each other as detailed above. It will also be important to ensure that intent of Legislature in bringing out the beneficial tax deduction provisions into statute should be the basis of formation of new hotel that would not result into any splitting or reconstruction of existing business. These are factual issues requiring verification of facts, which has been carried out in deep, as elaborately discussed in the body of the assessment order. The assessee failed to fulfill all the conditions laid down under sub-section (3) of Section 80 ID of the Act. The vital factors in determining the fulfillment of eligibility conditions laid down under the provisions of Section 80ID(3) of the Act and nature of business module adopted by the assessee to commence its operation is directly contradictory to each other as detailed in the assessment order. It will also be important to ensure that intent of Legislature in bringing out the beneficial tax deduction provisions into statute should be the basis of formation of new hotel that would not result into any splitting or reconstruction of existing business. The Assessing Officer has established that existing hotel building which was first given on rent for hotel business and then it was sold to the assessee. It is also admitted fact on record that the assessee had wrongly claimed deduction u/s 80ID of the Act during the earlier assessment years.

7. We have heard both the parties and perused the material available on record. The assessee before us submitted that land was purchased by Bharti Sehgal and Sunil Kumar, Developer of this property on 21.03.2007. The period of construction of hotel described by the Assessee is F.Y. 2007-08 to 2008-09. The UPVAT registration done by Bharti Sehgal, Developer of the property was on 19.08.2008. Rent agreement between Bharti Sehgal and Ramesh Bhatia (HUF) i.e. the assessee herein was entered on 06.10.2008. The business was started on October, 2008. Approval from pollution control board was obtained

on 02.12.2008. Approval from fire department was obtained on 08.11.2008. Deed for purchase of Hotel Building by Ramesh Bhatia was entered into on 08.06.2009. Categorised as 2 star hotel by Ministry of Tourism on 20.08.2010. The initial assessment year is 2011-12. Firstly, we must look into Section 80ID which is extracted as follows:

***“Deduction in respect of profits and gains from business of hotels and convention centres in specified area.***

*80ID. (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking from any business referred to in sub-section (2) (such business being hereinafter referred to as the eligible business), 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 of an amount equal to hundred per cent of the profits and gains derived from such business for five consecutive assessment years beginning from the initial assessment year.*

*(2) This section applies to any undertaking,—*

- (i) engaged in the business of hotel located in the specified area, if such hotel is constructed and has started or starts functioning at any time during the period beginning on the 1st day of April, 2007 and ending on the 31st day of March, 2010; or*
- (ii) engaged in the business of building, owning and operating a convention centre, located in the specified area, if such convention centre is constructed at any time during the period beginning on the 1st day of April, 2007 and ending on the 31st day of March, 2010.*

*(3) The deduction under sub-section (1) shall be available only if—*

- (i) the eligible business is not formed by the splitting up, or the reconstruction, of a business already in existence;*
- (ii) the eligible business is not formed by the transfer to a new business of a building previously used as a hotel or a convention centre, as the case may be;*
- (iii) the eligible business is not formed by the transfer to a new business of machinery or plant previously used for any purpose.*

*Explanation.—The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section;*

*(iv) the assessee furnishes along with the return of income, the report of an audit in such form and containing such particulars as may be prescribed, and duly signed and verified by an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed.*

*(4) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or section 10AA, in relation to the profits and gains of the undertaking.*

*(5) The provisions contained in sub-section (5) and sub-sections (8) to (11) of section 80-IA shall, so far as may be, apply to the eligible business under this section.*

*(6) For the purposes of this section,—*

*(a) "convention centre" means a building of a prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of such size and number and having such other facilities and amenities, as may be prescribed;*

*(b) "hotel" means a hotel of two-star, three-star or four-star category as classified by the Central Government;*

*(c) "initial assessment year"—*

*(i) in the case of a hotel, means the assessment year relevant to the previous year in which the business of the hotel starts functioning;*

*(ii) in the case of a convention centre, means the assessment year relevant to the previous year in which the convention centre starts operating on a commercial basis;*

*(d) "specified area" means the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad;*

*(e) "specified district having a World Heritage Site" means districts, specified in column (2) of the Table below, of the States, specified in the corresponding entry in column (3) of the said Table:*

*.....*

*.”*

It is pertinent to note here that as per sub-section (3) of 80ID, the deduction is not available to the eligible business if it is formed by the splitting up, or the reconstruction, of a business already in existence as well as when the eligible

business is formed by the transfer to a new business of a building previously used as a hotel or a convention centre, as the case may be. Here the fact emerging from the records shows that the seller Bharti Sehgal and Sunil Kumar had purchased the plot C-2/3, Taj Nagri, Phase II, Fatehabad Road, Agra, in 21.03.2007 and subsequently carried out construction of Hotel in the name and style of Hotel Rani Mahal during F.Y. 2007-08. The said hotel building was let out to the assessee during F.Y. 2008-09 relevant to A.Y. 2009-10 vide lease/rent agreement dated 01.10.2008. This lease agreement clearly set out that the lease/rent period was for eleven months only. From perusal of paper book submitted by the Ld. AR at page 51, there is a Form IV under UPVAT Act, 2008 submitted by Bharti Sehgal dated 25.10.2008 thereby stating that the said Bharti Sehgal has surrendered the registration certificate as the business of HOTEL Rani Mahal was closed w.e.f. 05.10.2008. But Form No. 10CCBBA as per Rule 18DE of the assessee which is at page 67 of the paper book mentioned the said property under the name HOTEL SIRIS 18 situated at C 2/3, Taj Nagri, Phase -II, Agra - 282001 commencing its operation on 08/2010. From the above facts it can be seen that the construction of the Hotel Rai Mahal was prior to April, 2008 and the earlier Hotel Rani Mahal was functioning till 04.10.2008. The business (Hotel SIRIS 18 AGRA) is formed by the leased agreement between the assessee and Bharti Sehgal which was thereafter sold by Bharti Sehgal to the assessee 08.06.2009. The assessee claimed the deduction from A.Y. 2009-10 till 2012-13. The assessee thus has commenced already established business by way of transfer to a new business of a building previously used as a hotel. The case laws submitted by the assessee are not on the issue of Section 80ID eligibility as the conditions/criteria are different in Section 80IA, 80IB deductions. The case laws are on different factual aspects and hence not applicable in the present case. The CIT(A) also reiterated the same facts and correctly confirmed the Assessment order. There is no need to interfere with the observations made by the CIT(A) as the CIT(A) has given a detail finding after going through the facts

and applying the provisions of Section 80ID of the Act, in assessee's case for non-eligibility of the deduction. Thus, appeal of the assessee is dismissed.

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

**Order pronounced in the Open Court on this 24th Day of August, 2020.**

**Sd/-  
(R. K. PANDA)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 24 /08/2020  
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

