

**Case :-** INCOME TAX APPEAL DEFECTIVE No. - 155 of 2008

**Appellant :-** M/S Benaras Hotels Ltd.

**Respondent :-** The Asstt. Commissioner Of Income Tax

**Counsel for Appellant :-** Ashok Triedi

**Counsel for Respondent :-** C.S.C.,B.J. Agarwal

**Hon'ble Bharati Sapru,J.**

**Hon'ble Vinod Kumar Misra,J.**

Cause shown is sufficient; the short delay of three days is filing the appeal is condoned. We have heard learned counsel for both sides.

This appeal has been filed under section 260-A of the Income Tax Act, 1961 against the Appellate Order dated 27.05.2008 passed by the Income Tax Appellate Tribunal, Allahabad in I.T.A. No. 456/Alld/2007 for the assessment year 2004-2005. The questions of law referred to are as under:-

"(a) Whether under the facts and circumstances of the case, the Tribunal was legally correct in holding that the Interest Income of Rs.29,99,811/- of the Appellate Assessee was not liable to be considered as eligible for deduction u/s 80HHD of the Income Tax Act, 1961 ?

(b) Whether under the facts and circumstances of the case, the Tribunal is legally correct in confirming the finding of C.I.T. (Appeals) regarding the exclusion of 'Misc. Income' of Rs. 5,69,933/- for the purpose of calculation of deduction u/s 80HHD of the Act.

(c) Whether under the facts and circumstances of the case, the Tribunal could legally have given the finding that the Misc. Income of Rs.5,69,933/- was not eligible for deduction U/S 80 HHD of the Act without giving the finding that the "Misc. Income" in question was not Assessable under the head "Profits and Gains of Business or Profession"?

(d) Whether under the facts and circumstances of the case, the Tribunal has legally erred in not appreciating that even the Assessing Officer had not specifically held that the "Misc Income" in question was not Assessable under the head "Profits and Gains of Business or Profession", and hence without such prior finding, the deduction U/S 80 HHD could not had been denied by virtue of fiction created U/S 80 HHD (3)?"

The questions sought to be answered in this appeal are concluded by the previous orders of the Court dated 21.11.2016 in Income Tax Appeal No.343 of 2008 filed by the assessee for the assessment year 2002-03.

In so far as question No. (a) is concerned, it has been decided against the assessee by the tribunal in a previous assessment year 2003-04 which has not been challenged, therefore, this question has answered against the assessee.

In so far as the questions No. (b), (c) & (d) are concerned, they have already been decided in favour of the assessee in remand proceedings, therefore, these too need not be answered.

The appeal is disposed of in the above terms. No costs.

**Order Date :-** 24.11.2016  
S.P.

(Vinod Kumar Misra, J.) (Bharati Sapru, J.)