

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH COCHIN</b>
<b>BEFORE S/SHRI B.P. JAIN, AM and GEORGE GEORGE K., JM</b>

I.T.A. No. 240-242/Coch/2015
Assessment Years : 2007-08,2008-09 & 2010-11

M/s.Kumarakom Lake Resort Pvt. Ltd., Door No. 64, Kairali Apartments, Panampilly Nagar, Kochi-682 017. [PAN:AABCK 1974B]	<b>Vs.</b>	The Assistant Commissioner of Income-tax, Circle-1(2), Kochi.
<b>(Assessee -Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	Shri Balakrishnan K., CA
<b>Revenue by</b>	Shri Shantam Bose, CIT(DR) and Shri K.P. Gopakumar, Sr. DR

<b>Date of hearing</b>	03/02/2016
<b>Date of pronouncement</b>	01/03/2016

### **ORDER**

Per Bench:

These three appeals at the instance of the assessee are directed against the two orders of the CIT(A) both dated 20/10/2015. The relevant assessment years are 2007-08, 2008-09 and 2010-11.

2. Since common issues are involved in these appeals and they pertain to the same assessee, these appeals were heard together and are being disposed of by this consolidated order.

3. Identical grounds are raised in these appeals, hence, the grounds relating to the assessment year 2007-08 are reproduced below:

1. On the facts and circumstances of the case and considering the provisions in law, the learned Commissioner of Income-tax(Appeals)-I ("CIT(A)" while considering the claim of the Assessee for deduction u/s. 80IB(7) (a) of the Income Tax Act, 1961 ("Act") has erred in disallowing the receipts earned by the Assessee under various heads of income which have a direct nexus to the business activities of the Assessee and without considering the fact that the same is eligible for a deduction u/s. 80IB(7)(a) of the Act.

2. On the facts and circumstance of the case the learned CIT(A) has erred in disallowing the entire amount of other income derived from the business of the assessee without considering the fact that the portion of other income has already been offered to tax in the Return of Income filed for the Assessment Year 2007-08.

The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.

4. First we shall consider the facts for the assessment year 2007-08 and adjudicate the issues therein which will be binding on the other assessment years namely 2008-09 and 2010-11.

5. The brief facts in respect of the assessment year 2007-08 are as follows:

The assessee is a private limited company which is engaged in the business of running hotel by the name and style of 'Kumarakom Lake Resort'. For

the relevant assessment year, the return of income was filed on 14/11/2007 declaring 'Nil' income under the normal provisions and a sum of Rs.3,67,18,179/- as book profits u/s. 115JB of the Income Tax Act, 1961. The assessment was completed u/s. 143(3) of the Act on 22/12/2009 making certain disallowances. Subsequently, the Assessing Officer issued notice u/s. 148 and re-assessment u/s. 143(3) r.w.s. 147 of the Act was completed vide order dated 29/07/2013. In the re-assessment order, the Assessing Officer disallowed the claim of deduction u/s. 80-IB(7)(a) of the Income Tax Act amounting to Rs.6,84,491/-, for the reason that the assessee had not received approval from the Director General of Income Tax (DGIT) (Exemption). The Assessing Officer also excluded 'other income' earned by the assessee amounting to Rs.9,85,097/- from the purview of business profits for the purpose of calculating deduction u/s. 80IB(7)(a) of the Act stating that the same is not derived from the business of the Hotel.

6. Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT(A) taking note of the subsequent approval from the DGIT(Exemption) held that the assessee is entitled to deduction u/s. 80IB(7)(a) of the I.T. Act. With regard to the exclusion of other income for the purpose of calculating deduction u/s. 80IB(7)(a), the CIT(A) confirmed the assessment order.

7. Aggrieved by the CIT(A)'s order, the assessee is in appeal before us. The assessee has filed three sets of paper books for each of the assessment years, inter alia, containing computation statements, balance sheet and various judicial pronouncements. The Ld. Counsel for the assessee reiterated the submissions made before the first appellate authority.

8. The Ld. DR on the other hand submitted that the income is enumerated as 'other income' does not have direct nexus with the running of the hotel. It was submitted that in view of the judgment of the Apex Court in the case of CIT vs. Sterling Foods reported in 104 Taxman 204, the assessee is not entitled to the benefit of 80IB(7)(a) of the Act in respect of various receipts mentioned as "other income".

9. We have heard the rival contentions and perused the material on record. The following issues arise for our consideration, namely:-

i) Whether the CIT(A) is justified in disallowing the entire amount of other income derived from the business of the assessee without considering the fact that the interest income on Fixed Deposit of Rs.237,410 has already been offered to tax in the Return of Income filed for the Assessment Year 2007-08.

ii) Whether the CIT(A) is justified in excluding 'other income' earned by the assessee company for the purpose of deduction u/s. 80IB(7)(a) of the Act.

During the assessment year 2007-08, the following income earned by the assessee company was grouped under the head "other income" and the detailed split up of the other income earned by the assessee company are as follows:

Sl. No	Particulars	Nature of Income	Amount (INR)
1.	Interest Income	Interest on Fixed Deposit from SIB (Kumarakom)	237,410
2.	Rent Received from Heritage Shop	Curio Shop	180,000
3.	Rent on Amenities to M/s. Kumarakom Water Transport Pvt. Ltd.	Housekeeping and restaurant service	120,000
4.	Revenue from Staff Mess	Revenue from staff mess used by the Guest drivers	7,139
5.	Revenue from Staff Telephone	Revenue from telephone used by staff	90,048
6.	Other Miscellaneous Income	Income from club cultural programs/DJ etc.	475,216
7.	Miscellaneous Income	Income from sale of used packing materials, recovery of material damage from staff etc.	112,695
		Total	1,222,507

Out of the above other income, the assessee had already offered interest income on Fixed Deposit from SIB, (Kumarakom) amounting to Rs.2,37,410/- to be taxed in the return of income.

9.1 For the balance amount of Rs.9,85,097 (Rs.12,22,507-2,37,410/-), the assessee had claimed deduction u/s. 80IB(7)(a) of the Act. According to the assessee, the above mentioned receipts described as "other income" has direct nexus with the business of the assessee and, accordingly, it was eligible for deduction u/s. 80IB(7)(a) of the I.T. Act. The Assessing Officer for the assessment year completed u/s. 143(3) r.w.s. 147 of the Act disallowing the claim of the assessee for the reason that 'other income' earned by the assessee is only incidental and does not have direct nexus with the business of the assessee company. The CIT(A) further held that though "other income" appears to have arisen from business and its related activities of the assessee, it cannot be said to have been "derived from" business of Hotel.

9.2 As regards the CIT(A)'s inclusion of interest income on FD from SIB amounting to Rs. 2,37,410/- for the purpose of denial of deduction u/s. 80IB(7)(a) of the Act, according to us, is misconceived because the assessee company itself had offered the same to tax. This is evident from the computation of total income for the relevant assessment year which is enclosed as Annexure A to the paper book filed for the assessment year 2007-08. When the assessee itself has added back the amount to the P&L a/c, the CIT(A) is not justified in including the same under the head "other

income" for the purpose of denying deduction u/s. 80IB(7)(a) of the Act. It is ordered accordingly. Therefore Ground No. 2 is allowed.

9.3 With regard to the other receipts whether it is entitled to deduction u/s. 80IB, necessarily, we have to examine the meaning of the word "derived from" contained in section 80IB of the Act. Section 80-IB of the Act provides for deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. As per the provisions of section 80-IB of the Act, deduction is available to profits and gains "derived from" the specific business. The phrase derived from used in section 80-IB is highlighted for reference below-

*"Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to (11), (11A) and (11B) (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 from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section."*

9.4 Further, sub-section (7) to section 80IB reads as follows:

*"(7) The amount of deduction in the case of any hotel shall be –  
(a) fifty percent of the profits and gains derived from the business of such hotel for a period of ten consecutive years....."*

9.5 The Institute of Chartered Accountants of India ("ICAI") has prescribed Technical Guide on Audit in Hotel Industry. The guide provides for key

revenue generation activities in case of hotel industry which has been detailed as follows:-

Room revenue;  
Retention charges – due to cancellation;  
Food and Beverage (F&B) revenue from restaurants;  
F&B revenue from mini bar;  
F&B revenue from banquets;  
Hall hire from banquets.  
Communication revenue (both telephone & internet);  
Disposal of empties/sale of scrap  
Car Hire Income;  
Business Centre revenue;  
Arcade revenues;  
Health club/club ue/Spa/Beauty parlour revenues;  
Laundry revenues;  
Housekeeping bills;

9.6 As per generally accepted Uniform System of Accounting followed by hotel industries in India revenue is divided into four categories as follows:-

Particulars	Amount
Revenue:	
I) Rooms	Xxx
II) Food and beverages	Xxx
III)Other operated departments	Xxx
IV)Rentals and other income	Xxx

Food and Beverages revenue shall include the following:-

Particulars	Amount
Food and Beverage Revenue:	
Outlet Food Revenue	Xxx
Outlet Beverage Revenue	Xxx
In-Room Dining Food Revenue	Xxx
In-Room Dining Beverage Revenue	Xxx
Banquet/Catering Food Revenue	Xxx
Banquet/Catering Beverage Revenue	Xxx
Mini Bar Food Revenue	Xxx
Mini Bar Beverage Revenue	Xxx
Other Food Revenue	Xxx



Other Beverage Revenue	Xxx
Less: Allowances	(xxx)

Rentals and other income shall include the following:-

Particulars	Amount
Space Rental and Concessions	Xxx
Commissions	Xxx
Cancellation Penalties	Xxx
Guest Laundry and Dry Cleaning	Xxx

9.7 The other income earned by the assessee and the grouping under the key revenue generation category can be summarized in the below table

Sl. No.	Other income received by the Company	Key revenue generation category as per the ICAI guidelines and Uniform system of accounting
1.	Rent received from Heritage Shop	Space Rentals, Arcade revenue, Housekeeping bills.
2.	Rent received for space and amenities given to M/s. Kumarakom Water Transport Pvt. Ltd.	
3.	Revenue from staff mess used by the Guest drivers	Food and Beverages
4.	Revenue from telephone used by staff	Communications revenue (both telephone and internet)
5.	Income from club cultural programs/DJ/etc.	Club use revenue
6.	Income from sale of used packing materials, recovery of material damage from staff etc.	Disposal of empties/sale of scrap

Thus it can be seen from the above that, rent received by the assessee of Rs.180,000/- from Heritage Shop which represents rental income from Curio

Shop and of Rs.120,000/- for the space and amenities given to Kumarakom Water Transport Pvt. Ltd. will fall within the key revenue generation category of 'Space Rentals' and 'Arcade revenue' and 'Housekeeping bill' for a hotel industry. Revenue from staff mess of Rs.7,139/- will also fall within the key revenue generation category of 'Food and Beverages' for a hotel industry. Revenue from staff telephone of R.90,048/- will fall within the key revenue category of 'Communication revenue (both telephone & internet)' as per ICAI guidelines. Income from club cultural program/DJ of Rs.475,216/- will fall within the key revenue generation category of Club use revenue. Further the sale of used packing materials, recovery of material damage from staff etc. will fall within the key revenue category of 'Disposal of empties/sale of scrap' as per the ICAI guidelines. Thus it can be seen that the other income earned by the assessee company would fall within the ambit of key revenue generating activity in case of a hotel industry and, accordingly, has a direct nexus with the hotel business of the undertaking.

9.8 The Assessing Officer has disallowed the deduction u/s. 80-IB(7)(a) of the Act towards 'other income' on the contention that, the assessee in the books of account has termed it as "Other Income" and, accordingly, the same is not derived from the business of the assessee. The Hon'ble Supreme Court of India in the case of Kedarnath Jute Mfg. Co. Ltd. vs. CIT (82 ITR 363) has held that, "*Whether the assessee is entitled to a particular*

*deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of its right nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter."* In view of judgment of Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Co. Ltd. vs. CIT (supra), it is very clear that the assessee would be entitled to eligible deduction, irrespective of the manner in which the entries in the books of account are maintained.

9.9 The High Court of Madras in the case of Fenner (India) Ltd. vs. CIT (125 Taxman 386) has held that, *"In the industrial undertaking in the manufacture of V-belts, oil seals, O-rings and rubber moulded products, certain scrap materials resulted, which have a saleable value. To say that the scrap materials had no direct link or nexus with the industrial undertaking cannot at all be expected to commend acceptance, especially, on the facts and in the circumstances of the case. In this view of the matter, we are of the view that profits and gains from the sale of scrap materials are eligible for deduction in an amount equal to 20 per cent u/s. 80HH, in as much as such gains or profits are derived from the industrial undertaking and includible in the gross total income of the assessee and the question relatable to the profit on the sale of scrap is, thus, answered in favour of the assessee."* The Delhi High Court in the case of CIT vs. Sadhu Forging Ltd. (11 taxmann,.com 322) has held that , *'Keeping in view the activities of the assessee in giving heat*

*treatment for which it had earned labour charges and job-work charges, it can thus be said that the appellant had done a process on the raw material which was nothing but a part and parcel of the manufacturing process of the industrial undertaking. These receipts cannot be said to be independent income of the manufacturing activities of the undertakings of the assessee and thus could not be excluded from the profits and gains derived from the industrial undertaking for the purpose of computing deduction u/s. 80-IB. These were gains derived from industrial undertakings and so entitled for the purpose of computing deduction u/s. 80-IB. There cannot be any two opinions that manufacturing activity of the type of material being undertaken by the assessee would also generate scrap in the process of manufacturing. The receipts of sale of scrap being part and parcel of the activity and being proximate thereto would also be within the ambit of gains derived from industrial undertaking for the purpose of computing deducting u/s. 80-IB."*

9.10 In the instant case, the following income which has been classified as 'other income' in the books of account:-

- i) Rent received from Heritage Shop.
- ii) Rent received for the space and amenities given to Kumarakom Water Transport Pvt. Ltd.
- iii) Revenue from staff mess used by guest drivers.
- iv) Revenue from telephone used by staff.
- v) Income from club cultural programs/DJ etc.

- vi) Income from sale of used packing materials, recovery of material damage from staff etc.

would qualify as income derived from specified business considering the fact that there is a direct nexus and a proximate connection with the business of the assessee. The 'other income' as mentioned above is not earned from a separate cost and profit centre, but is derived from the main profit centre of hotel industry itself. The source of the profits of the 'other income' as mentioned above continues to be the business profits from the hotel industry and there is no other commercial activity which is carried on by the assessee.

9.11 Moreover, section 80IB(7)(a) states that 50% of the profits and gains derived from the business of such Hotel. In this context also, it can be stated that the term 'profits and gains derived from the business of such hotel' has wider meaning than the term 'profits and gains derived from an undertaking'. We have mentioned in the earlier paragraphs with reference to the ICAI audit guidelines that these are receipts directly on account of running of the Hotel business and it is not incidental/ancillary income and, therefore, these receipts though termed as "other income" is entitled to the benefit of deduction u/s. 80IB of the Act. Hence, the grounds of the assessee are allowed for the assessment year 2007-08.

9.12 The details of the 'other income' for the assessment years 2008-09 and 2010-11 are as follows:-

**AY 2008-09**

Sl. No.	Particulars	Nature of income	amount (INR)
1.	Interest income	Interest on Fixed Deposit from SIB	89,915
2.	Revenue from Staff Mess	Revenue from staff mess used by the Guest drivers	2,121
5	Revenue from Staff Telephone	Revenue from telephone used by staff	65,340
6	Miscellaneous Income	Income from club cultural programme/DJ/etc.	774,657
7.	Other Miscellaneous Income	Income from sale of used packing materials, recovery of material damage from staff etc	254,795
8.	Refund	Interest received on income tax Refund	86,363
		Total	1,273,191

**AY 2010-11**

Sl. No.	Particulars	Nature of income	amount (INR)
1.	Interest income	Interest on Fixed Deposit from SIB(Kumarakom)	198,198
2.	Rent received from M/s. Kumarakom Water Transport Pvt. Ltd.	Rent on space and amenities given to M/s. Kumarakom Water Transport Pvt. Ltd.	120,000
3.	Revenue from Staff Mess	Revenue from staff mess used by the Guest drivers	88,825

4.	Other Miscellaneous Income	Income from sale of used packing materials, recovery of material damage from staff etc	85,279
5.	Interest Received on Income Tax Refund	Interest received on income tax Refund	69,209
		Total	561,511

After examining the receipts for the assessment year 2007-08, we have held that the assessee is entitled to deduction u/s. 80IB(7)(a) of the Act. Similarly, in respect of 'other income' for AY's 2008-09 and 2010-11, except for interest income and interest on refund, the 'other income' enumerated above is entitled to the benefit of deduction u/s. 80IB(7)(a). Therefore, our findings and conclusions for the assessment year 2007-08 will hold good for the assessment year 2008-09 and 2010-11. It is ordered accordingly.

10. In the result, the appeals filed by the assessee are allowed.

Pronounced in the open court on 1-03-2016.

sd/-  
(B.P.JAIN)  
ACCOUNTANT MEMBER  
Place : Kochi  
Dated: 1st March, 2016  
GJ

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

Copy to:  
1. M/s.Kumarakom Lake Resort Pvt. Ltd., Door No. 64, Kairali Apartments, Panampilly Nagar, Kochi-682 036.  
2. The Assistant Commissioner of Income-tax, Circle-1(2), Kochi.  
3. The Commissioner of Income-tax(Appeals)-I, Kochi.

4. The Commissioner of Income-tax, Kochi.
5. D.R., I.T.A.T.,Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin