

**Court No. - 35**

**Case :- INCOME TAX APPEAL No. - 213 of 2015**

Appellant :- Bir Hotels Pvt. Ltd.

Respondent :- Assistant Commissioner Of Income Tax And Anr.

Counsel for Appellant :- Suyash Agarwal

Counsel for Respondent :- C.S.C. It,Manu Ghildyal,Praveen Kumar

**AND**

**case :- INCOME TAX APPEAL No. - 214 of 2015**

Appellant :- Bir Hotels Pvt. Ltd.

Respondent :- Assistant Commissioner Of Income Tax And Anr.

Counsel for Appellant :- Suyash Agarwal

Counsel for Respondent :- C.S.C. It,Praveen Kumar

**AND**

**Case :- INCOME TAX APPEAL No. - 70 of 2017**

Appellant :- Bir Hotels Pvt. Ltd.

Respondent :- Asstt.Commissioner Of Income Tax And Another

Counsel for Appellant :- Suyash Agarwal

Counsel for Respondent :- C.S.C.,Praveen Kumar

**AND**

**Case :- INCOME TAX APPEAL No. - 259 of 2016**

Appellant :- Bir Hotels Pvt. Ltd. Allahabad

Respondent :- Asst. Commissioner Of Income Tax Range-Ii And Another

Counsel for Appellant :- Suyash Agarwal

Counsel for Respondent :- S.C.,Praveen Kumar

**AND**

**Case :- INCOME TAX APPEAL No. - 57 of 2017**

Appellant :- Bir Hotels Pvt. Ltd.

Respondent :- Asstt.Commissioner Of Income Tax And Another

Counsel for Appellant :- Suyash Agarwal

Counsel for Respondent :- C.S.C.,Praveen Kumar

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

**Hon'ble Rohit Ranjan Agarwal,J.**

Heard Sri Suyash Agrawal, learned counsel for the appellant-assessee and Shri Manu Ghildyal and Shri Praveen Kumar, learned counsel for the department.

Since the facts and the issue involved in all these appeals is identical, all the appeals are being heard together and disposed of by a common order which is being passed in Income Tax Appeal No.213 of 2015, treating as a leading case.

This appeal under Section 260A of the Income Tax Act, (hereinafter referred to as the 'Act') has been filed by the assessee against the order of the Tribunal dated 22.04.2015. The appeal has been admitted on 31.08.2015 on the following questions of law:-

*(i). Whether the Tribunal is legally justified in denying the deduction under Section 80IB (7)(a) of the Income Tax Act on the income from the saloon section by the appellant-hotel?*

*(ii) Whether after holding the saloon activity as desirbale and CIT (A) holding it to be an integral part of the Hotel business which finding holds goods, the Tribunal is legally justified in holding that the receipts from saloon business are not derived from the hotel business?*

We have heard learned counsel for both the sides at length and have also perused the material on record as well as the original record summoned before us.

Upon production of record we have also examined the contract or the agreement of franchisee between the assessee and Lakme saloon.

The undisputed facts of the case are that the hotel business was initiated by the assessee in the year 2001 and had become operational from then without having the saloon business. The saloon business came into existence subsequently by virtue of a franchisee agreement with the Lakme in the year under consideration.

The assessee seeks to contend that like the restaurant section or the bar section, the saloon section was also to be considered as an integral part of the business of the hotel

as it also connected to the general needs of the people and as a result thereof it would also become eligible to claim deduction on the receipts derived from the saloon bar, which was to be treated as part of the receipt of the hotel business.

Learned counsel for the department has sought to argue otherwise and has argued that in order to consider the receipts of saloon business to be part and parcel of the hotel business, it would be necessary that the receipts so obtained should have a direct nexus to the core business activity of the hotel and only then they would be eligible for deduction.

It is a matter of record that the saloon section started functioning in the year 2005-06 whereas hotel is already functioning from the year 2001 as a licenced three star hotel. Upon examination, it comes to the light that the core business of the hotel business was the hiring of rooms, halls, restaurant, bar etc, but it could not be said that the saloon section was the core activity of the hotel business.

The Tribunal while examining the facts has also come to the conclusion that there was no material on record regarding the nature of customers who came and utilise the saloon activities. The facilities of saloon were not confined to the indoor inmates of the hotel but facilities were extended to outsiders also and therefore, could not be said that the saloon business is an integral part of the hotel activity.

The Tribunal while examining the matter has also come to the conclusion that the business of hair styling, hair cutting and beauty treatment being related to cosmetics, cannot be equated with the essential part of the hotel business such as providing food and refreshment to the

inmates of the hotel and, therefore, has come to the conclusion that it cannot be said that the saloon business was an integral part of the hotel activities and, therefore, also has come to the conclusion that receipts from the saloon sections are not derived from the hotel business.

While considering the case on facts, the authorities below have examined the contract or franchisee agreement of the assessee with M/s. HLL, which has a separate and distinct identity from the hotel business of the appellant.

The authorities below have also examined the decision of the Hon'ble Apex Court in the case of *CIT vs. Sterling Foods reported in (1999) 237 ITR 579 (SC)*, wherein the Apex Court has inter alia held that the word "derived from" restricts the qualifying profits to the profits directly arising from the particular activity and not the receipts unrelated to the eligible business. There must be, for the application of the word "derived from", a direct nexus between profits and gains and the industrial undertakings.

The authorities below therefore, came to the conclusion that because the appellant was not fulfilling any of the requisite conditions and the income was not directly derived from the business and had no direct nexus, the benefit of section 80IB (7)(a) of the Income Tax Act, 1961 was rightly denied. As such the assessee clearly was not eligible for it. The relevant part of the provisions of section 80IB (7)(a) of the Act is quoted below:

*"(7) (a) The amount of deduction in the case of any hotel shall be—*

*(a) fifty per cent of the profits and gains derived from the business of such hotel for a period of ten consecutive years beginning from the initial assessment year as is located in a hilly area or a rural area or a place of pilgrimage or such other place as the Central Government may, having regard to the need for development of infrastructure for tourism in any place and other relevant considerations, specify by notification in the Official Gazette and such hotel starts functioning at any time during the period beginning on the 1st day of April, 1990 and ending on the 31st day of March, 1994 or*

*beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2001:*

*Provided that nothing contained in this clause shall apply to a hotel located at a place within the municipal jurisdiction (whether known as a municipality, municipal corporation, notified area committee or a cantonment board or by any other name) of Calcutta, Chennai, Delhi or Mumbai, which has started or starts functioning on or after the 1st day of April, 1997 and before the 31st day of March, 2001:*

*Provided further that the said hotel is approved by the prescribed authority for the purpose of this clause in accordance with the rules made under this Act and where the said hotel is approved by the prescribed authority before the 31st day of March, 1992, shall be deemed to have been approved by the prescribed authority for the purpose of this section in relation to the assessment year commencing on the 1st day of April, 1991;*

(b).....

(c).....

Having heard the learned counsel for both sides and having examined the record as well as the order passed by the authority below, we are of the considered opinion that the assessee failed to establish that the saloon business was the part and parcel of the core activity of the hotel business.

The questions of law are, therefore, answered in favour of the department and against the assessee.

The appeal fails and is accordingly dismissed.

Order Date :- 7.8.2019

pks/rk