

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

I.T.A. No.4171/M/2015 (Assessment Year: **2012-2013**)

ITO-31(2)(4), R.No.704, C-11, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.	बनाम/ Vs.	M/s. Neeta Enterprises, 801, Hubtown Solaries N.S. Phadke Marg, Off. Teli Galli, Nr. Andheri Flyover, Andheri (E), Mumbai – 400 069.
स्थायी लेखा सं./PAN : AACFN4947M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Vimal Punmiya
प्रत्यर्थी की ओर से/ Respondent by	:	Shri N.P. Singh, CIT-DR

सुनवाई की तारीख /Date of Hearing : 16.03.2017

घोषणा की तारीख /Date of Pronouncement : 29.03.2017

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the Revenue on 7.7.2015 is against the order of the CIT (A)-42, Mumbai dated 22.4.2015 for the assessment year 2012-13. In this appeal, Revenue raised the following grounds which read as under:-

"1. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in allowing deduction u/s 80-IB(10) of the Act ignoring the fact that the approval of the local authority was obtained on 28.11.1992 ie much before 1.10.1998 the date on or after which the project approved were eligible for deduction u/s 80IB(10) of the Act.

2. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in allowing deduction u/s 80IB(10) of the Act ignoring the fact that it has not obtained completion certificate from local authority before 31.3.2008 which is mandatory as per Explanation (ii) to section 80IB(10) of the Act."

2. The only issue raised in this appeal relates to the allowability of deduction u/s 80-IB(10) of the Act. In the assessment, AO disallowed the claim of the assessee consistently on the ground that the project undertaken by the assessee is eligible for deduction as the completion certificate was not obtained before 31st March, 2008.

3. On the above issue, Ld Counsel for the assessee brought our attention to the order of the Tribunal in the assessee's own case for the AYs 2007-08 and 2010-11 in ITA Nos. 5205 and 5206/M/2014 vide Tribunal's order dated 21.10.2016. Further, Ld AR brought our attention to the order of the Tribunal in assessee's own case for the AY 2011-12 in ITA No.6002/M/2014 and submitted that in the said order similar issue came up for adjudication and the appeal of the Revenue was dismissed vide its order dated 23.9.2016.

4. After hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the cited decisions of the Tribunal (supra) and the relevant material placed before us. On perusal of the cited order of the Tribunal for the AY 2011-2012 (supra), wherein the undersigned are the parties to the said order, we find, the identical issue was adjudicated by the Tribunal in favour of the assessee and dismissed the Revenue's appeal. Considering the significance and for the sake of completeness of this order, relevant paras 2 to 6 from the said order are extracted as under:-

"2. Before us, in connection with **Ground no.1**, Ld Counsel for the assessee submitted that the issue raised in this appeal relates to the "**commencement**" of the housing project for the purpose of section 80IB(10) of the Act. Stating that this issue stands covered in favour of the assessee in assessee's own case by virtue of the order of the Tribunal for the earlier assessment years, Ld Counsel for the assessee filed a copy of the order of the Tribunal in ITA No.2898/M/2010 (2006-07) and others, dated 4.6.2014. He read out the relevant paras 18 and 19 of the said Tribunal's order.

3. After hearing both the parties and on perusal of the cited order of the Tribunal in assessee's own case (supra), we find, the following lines are relevant for adjudication of Ground no.1 and the same read as under:-

"19. Therefore, we find no infirmity in the finding recorded by the Ld CIT (A) that the AO was wrong in holding that the housing project of the assessee had commenced before 1.10.1998. We uphold his order. Since, the facts and circumstances in all the three cases are identical, all the appeals filed by the Revenue are dismissed."

4. The above finding of the Tribunal if read along with the finding of the CIT (A) in his order vide the contents of para 2.4 on page 14, the decision taken by the CIT (A) is fair and reasonable and the issue raised by the Revenue in Ground no.1 is required to be dismissed. We order accordingly. Thus, Ground no.1 raised by the Revenue is **dismissed**.

5. Regarding **Ground no.2** relating to the date of completion of the project, also it is the contention of the Ld Counsel for the assessee that the same stands covered and the CIT (A)'s decision given in para 3.4 of his order at page 32 is relevant in this regard. It is the finding of the CIT (A) that the project in question was approved prior to the amendment and therefore, the provisions relating to the 'due date' fixed in the Statute are inapplicable. However, notwithstanding the same,

it is the argument of the Ld Counsel for the assessee that the housing project consists of 'seven' buildings (A to G) and the buildings 'A, B and C' were completed on 18.2.2006; buildings 'D, E and F' were completed on 3.2.2007 and finally, the building 'G' was completed on 29.3.2008 ie on or before the due date of 31.3.2008. In this regard, he brought our attention to the copies of the completion certificates enclosed to the note provided by the Ld AR dated 7.9.2016.

*6. On perusal of the above facts as well as the relevant material placed before us and after hearing both the parties, we find, the decision given by the CIT (A) vide para 3.4 of his order is fair and reasonable and therefore, it does not call for any interference. Accordingly, Ground no.2 raised by the Revenue is **dismissed**."*

5. Considering the settled nature of the issue and also respectfully following the order of the Tribunal on identical issue as well as following the principle of consistency, we are of the opinion, the issue raised in this appeal should be allowed in favour of the assessee. Accordingly we order and the grounds raised by the Revenue are dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 29th March, 2017.

Sd/-

(RAVISH SOOD)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 29.03.2017
व.नि.स./ OKK, Sr. PS

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai