

IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” Bench, Mumbai  
Before Shri B.R. Baskaran (AM) & Shri Sanjay Garg (JM)

I.T.A. No. 1037/Mum/2014  
(Assessment Year 2008-09)

M/s. Akash Construction Shop No. 27/A Building No. 1 Akashganga Apartments Shriprastha Complex Nallasopara West Taluka Vasai Thane-401 203. (Appellant)	Vs.	ITO Ward 4(1) Qureshi Mansion Gokhale Road Naupada Thane. (Respondent)
---	-----	---

PAN No.AALFA6549B

Assessee by	None
Department by	Shri A.B. Koli
Date of Hearing	22.8.2016
Date of Pronouncement	22.8.2016

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 20.12.2013 passed by learned CIT(A)-II, Thane and it relates to A.Y. 2008-09.

2. None appeared on behalf of the assessee. From the record we noticed that the Registry has sent notice of hearing on two occasions and both notices have been returned back by the postal department with the endorsement “unclaimed”. Hence, we proceed to dispose of the appeal ex-parte, without presence of the assessee.

3. We have heard learned Departmental Representative and perused the record. The assessee is aggrieved by the decision of learned CIT(A) in rejecting the claim made by the assessee u/s. 80IB(10) of the Act.

4. The assessee developed a housing project and claimed deduction u/s 80IB(10) of the Act. The AO rejected the claim on the following reasons :-

- a) Project undertaken by the assessee has not been completed on or before 31.3.2008
- b) Area of the land was below one acre.

5. In the appellate proceedings, learned CIT(A) noticed that the Tribunal has considered the issue relating to completion of project in A.Y. 2006-07 and has decided the same in favour of the assessee, vide its order dated 17.7.2013 passed in ITA No. 5108/Mum/2011. Accordingly, by following the decision of the Tribunal, learned CIT(A) set aside the order of AO with regard to the first reasoning of rejection.

6. With regard to the second reasoning given by the Assessing Officer, learned CIT(A) noticed that the area of plot on which project was developed was less than one acre, which violated one of the mandatory conditions prescribed for claiming deduction u/s 80IB(10) of the Act. Accordingly, he confirmed the order of the Assessing Officer, as the assessee did not fulfill the conditions for deduction with regard to the area of the land.

7. Aggrieved, the assessee has filed this appeal before us. However, before us also, no material was placed by the assessee to contradict the findings given by learned CIT(A) on the issue of extent of land on which the project was developed. Hence, we do not have any other option, but to confirm the order passed by learned CIT(A).

8. The assessee has also challenged the validity of reopening of the assessment u/s. 147 of the Act. We noticed that learned CIT(A) has upheld the validity of reopening and assessee has not furnished any material to contradict the findings given by learned CIT(A) on this issue. Accordingly, we uphold, the order passed by learned CIT(A) on this issue.

9. In the result, appeal filed by assessee is dismissed.

Order has been pronounced in the Court on 22.8.2016

Sd/-  
(SANJAY GARG)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 22/8/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai

PS