

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.5121/Mum/2014
(निर्धारण वर्ष / Assessment Year : 2010-11)

Dy.Commissioner of Income Tax- 17(2), Room No.217, 2 nd floor, Piramal Chambers, Mumbai-400012	बनाम/ Vs.	Shri Mudhit Madanlal Gupta, 1 st floor, Bahubali Building, Cawasji Patel, Fort, Mumbai-400019
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स्थायी लेखा सं./ PAN :AACPG3554F

अपीलार्थी ओर से / Appellant by	Shri A K Dhondial
प्रत्यर्थी की ओर से/Respondent by	Shri Neeraj Agarwal

सुनवाई की तारीख / **Date of Hearing** : **18.1.2017**
घोषणा की तारीख / **Date of Pronouncement** : **24.1.2017**

आदेश / ORDER

PER RAJESH KUMAR, AM

The appeal filed by the revenue is directed against the order dated 30.5.2014, passed by the Commissioner of Income Tax(A), Mumbai u/s 143(3) of the Income Tax Act for the assessment year 2009-10.

2. The only effective ground raised by the revenue is against the deletion of disallowance under section 80IB(10) of the Income Tax Act, 1961 amounting to Rs.46,12,951/- by the Id.CIT(A) as made by the AO without appreciating that the necessary condition precedent for allowing

deduction under section 80IB(10) of the Act were not duly and fully satisfied and fulfilled.

3. The brief facts of the case are that the assessee filed return of income on 14.10.2010 declaring total income of Rs.2,39,319/-. The case of the assessee was selected under CASS and statutory notices under section 143(2) and 142(1) of the Act were issued and served upon the assessee. During the course of assessment proceedings, the AO found that the assessee has shown income from housing project of Rs.45,62,951/- which was claimed as exempt under section 80IB(10) of the Act and consequently, called upon the assessee to file all the supporting documents/evidences in connection therewith. The AO, after considering all the submissions and contentions of the assessee, rejected the same by observing that the assessee has entered into Development Agreement with the land owner in which the assessee was entitled to 51% of the total building and remaining 49% was to be vested in the land owner and accordingly the assessee undertook the construction of the project consisting of four wings A,B, C and D as per commencement certificate dated 14.2.2007 was issued by the MMC. Up to March 31st 2008 the assessee completed construction of A,B,C wings and accordingly commencement certificate was also obtained. Whereas Wing-D was not completed. The assessee accordingly, claimed deduction u/s 80IB(10) of the

Act on the profit resulted from Wings-A,B, and C. As per the AO the assessee has completed only three wings whereas the wing-D was not completed and no certificate of completion was obtained from MMC which proved that the project was not completed within a stipulated time. The AO further observed that if all the four wings were part of the same project and then the completion of three out of four wings could not be considered as fulfillment of the conditions as envisaged under section 80IB(10) of the Act. The second objection for non granting benefit of section 80IB(10) was that the total area was 1.88 acre, whereas as per the agreement the assessee's share was 51% and as a result the area which came to the assessee's shares was only 0.96 acre which was less than the required area of 1.00 acre and the last condition for not granting deducting u/s 80IB(10) was that the area of the flat was more than 1000 sq.ft. The AO made the disallowance despite the fact that the appeal of the assessee on similar issues in the assessment years 2005-06 to 2009-10 stood allowed by the ITAT on identical facts. However, the department has filed appeal under section 260 of the Act before the High Court. Ultimately, the assessment was completed by the AO vide order dated 28.3.2013 passed under section 143(3) by assessing the income of the assessee at Rs.48,52,270/- by rejecting the claim of the assessee u/s 80IB(10) of the Act amounting to Rs.46,12,951/-. Aggrieved by the order of the AO, the

assessee filed an appeal before the FAA who allowed the appeal of the assessee after considering the contentions and submissions of the assessee by observing and holding as under:

“12. It is clear from the above decision of the ITAT, Mumbai that all the issues on the basis of which the AO has denied the deduction u/s 801B(10) to the appellant during the year under consideration stands already decided in favour of the appellant. This fact has also been accepted by the AO in the assessment order but as the department has challenged the above decision of the ITAT before the High Court of Bombay, the additions have been made during the year under consideration to keep the issue alive, However, there is no denying the fact the issues under question already stands decided in favour of the appellant by the above mentioned order of the ITAT, Mumbai.

13. Respectfully following the above decision of the Hon'ble ITAT, the deduction claimed during the year under consideration by the appellant u/s 80IB(10) have been allowed to him in appellate order in his case for AY 2008-09 vide order No.CIT(A)/34/Tr.29/31/17/128/10-11 dated 29.2.2012, & also for AY 2009-10 vide orderNo.CIT(A)-29/RG-17/171/11-12 dated 27.11.2012. Since the facts of the case in the year under consideration are identical to the facts to that in A.Y. 2008-09 & AY 2009-10 and the project also being the same and respectfully following the decision of the Hon'ble ITAT, Mumbai, the disallowance made by the AO u/s 80IB(10) needs to be allowed for the year under consideration i.e. A.Y. 2010-11. Hence the additions made amounting to Rs.46,12,591/-”

4. We have carefully considered the rival contentions, perused the material placed before us during the course of hearing including the decision of authorities below. We find that the FAA has adjudicated the matter on the ground that the ITAT has already decided the issue of deduction u/s 80IB(10) in favour of the assessee and also recorded the

findings that the department has challenged the decision of the Tribunal in the jurisdictional High Court in order to keep the issue alive. In para 13 of the appellate order, the FAA also noted that following the decision of the Tribunal, the Id. CIT(A) has already allowed the appeal for the assessment year 2008-09 vide order No.CIT(A)/34/Tr.29/31/17/128/10-11 dated 29.2.2012. In view of the above facts, we find that the issue has been decided in favour of the assessee by the co-ordinate bench of the Tribunal in the earlier years and, we therefore, are inclined to uphold the order of Id.CIT(A) by dismissing the appeal of the revenue.

5. Grounds of appeal no.2 and 3 raised in this appeal are of academic in nature and therefore dismissed.

6. In the result, the appeal of the revenue stands dismissed.

Order pronounced on 24th January, 2017.

Sd

(MAHAVIR SINGH)
Judicial Member

sd

(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 24.1.2017.

Sr.PS:SRL:

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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**