

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

I.T.A No. 155/Kol/2017

Assessment Year : 2012-13

Bengal United Credit Belani Housing Limited -vs- C.I.T., Kolkata-4,
Kolkata Kolkata
[PAN : AACCB 3444 N]
(Appellant) (Respondent)

For the Appellant : Shri D.S.Damle, AR
For the Respondent : Shri Goulean Hangshing, CIT(DR)

Date of Hearing : 25.07.2017.

Date of Pronouncement : 31.07.2017.

ORDER

Per N.V.Vasudevan, JM

This is an appeal by the Assessee against the order dated 26.12.2016 of Pr. C.I.T., Kolkata-4, Kolkata passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’) for A.Y.2012-13.

2. The Assessee is a company. It is engaged in real estate business. For A.Y.2012-13 the assessee filed return of income on 23.09.2012 showing total income of Rs.39,290/-. The return was processed u/s 143(1) of the Act on 02.01.2014. Later on an order of assessment u/s 143(3) of the Act was passed on 04.03.2015. The assessment was completed by applying the provisions of section 115JB of the Act (Minimum Alternate Tax) on a book profit of Rs.1,21,24,731/- on which tax liability of the assessee was Rs.24,25,890/-.

3. Before completing the assessment u/s 143(3) of the Act the AO had issued a notice u/s 143(2) and 142(1) of the Act dated 07.08.2013 in which the AO had called upon the assessee to furnish the following details :-

“Particulars of Accounts and/or documents required :

1. Reasonably detailed note on the nature of business including details of addresses, phone number of all premises – Office, Branch, Godown, Workshop etc.
2. Complete set of Audited accounts, Tax Audit Report u/s 44AB with all schedules,, computation of income and income tax and hard copies of returns.
3. Any other details and/or documents for the purpose of assessment.

Please furnish all the above details along with a covering letter, mentioning all points.”

4. The AO issued notices u/s 142(1) of the Act dated 07.05.2014 and 17.06.2014 in which the AO had called for several details including the details of advance received from the customers. The assessee gave the following details as demanded by the AO in his submissions dated 03.09.2014 furnished before the AO:-

Name of the Tower	Annexure	Amount
Cypress	Annexure (i)	1,054,019,234
Conifer	Annexure (ii)	159,005,451
Beach	Annexure (iii)	21,506,706
Sub Total Willows		1,234,531,391
Birch	Annexure (iv)	10,668,769
Hazel	Annexure (v)	658,775
Maple	Annexure (vi)	5,076,749
Oak	Annexure (vii)	105,400
Sub Total Woods		16,509,693
Sundry Debtors from Customer		(125,836,967)
Total Advance Received		1,125,204,116

Detailed annexures in support of the above Advances giving names of each party was also given by the assessee and these documents are at pages 45 to 77 of the assessee’s paper book.

5. The assessee also claimed deduction u/s 80IB of the Act in respect of profits from housing projects. The assessee had claimed deduction of a sum of Rs.83,66,321/- in respect of profits from housing project and highland woods. The assessee filed the Tax

Audit Report u/s 44AB of the Act in Form No.3CA along with the particulars and also furnished Form No.3CD. In respect of deduction claimed u/s 80IB(10) of the Act the assessee also gave the audit report in Form No.10CCB and gave the basis on which deduction u/s 80IB was claimed by the assessee.

6. In the order of assessment u/s 143(3) of the Act the AO has specifically observed as follows on the deduction u/s 80IB(10) of the Act :-

“ 2. During the year, the assessee company is engaged in real estate business. The assessee has claimed deduction under section 80IB of the Act of Rs.83,66,321/- which was duly verified.”

7. In para-3 the AO has also observed that the assessee had filed all the details in support of the return which was test checked and placed on record.

8. The CIT in exercise of his powers u/s 263 of the Act was of the view that order of AO passed u/s 143(3) of the Act dated 04.03.2015 was erroneous and prejudicial to the interest of the revenue for the following reasons :-

“ 2. On examination of records, it is seen that the assessee has claimed deduction u/s 80IB(10) amounting to Rs. 83,66,321/-. The assessee had neither submitted mandatory Form No. 10CCB as per I. T. Rules 1962 during assessment proceedings nor' it had been submitted before the completion of assessment. The A.O. has also not asked to submit the said form. The A.O. allowed the deduction u/s 80IB(10) without examination of all the conditions prescribed by the section were satisfied or not. No queries had been raised by the AO at the assessment stage with regard to the calculation of the deduction u/s 80IB(10).

3. The case record of the assessee further revealed that during the year as Per Note 2.8 of Balance Sheet the assessee has received an amount of Rs. 38,04,12,195/-, totalling of Rs.1,12,52,04,116/- as on date 31.03.2012 on account of advance from the customers. On perusal of the assessment record it has been found that the AO has not examined this fact by issuing either notice u/s 133(6) or making any enquiry.

4. In light of the above, I am satisfied that prima facie the order dated 04.03.2015 passed u/s 143(3) of the Income Tax Act, 1961 is erroneous and prejudicial to the interests of the revenues. “

9. In response to the aforesaid show cause notice the assessee filed a reply in which the assessee brought to the notice of CIT that the Assessee's tax liability was determined under section 115JB of the Act, whereby Minimum Alternate Tax ('MAT') (including surcharge and education cess) on adjusted book profit was computed at Rs 2,425,890. The assessee has furnished the Form 10CCB (copy re-enclosed as Annexure 2 for your reference) and complete details relating to advance from customers before the learned assessing officer during the course of the assessment proceedings. The deduction of Rs 8,366,321 claimed by the assessee under section 80IB of the Act was granted by the learned assessing officer after due verification. The details of advances were also duly verified by the AO.

10. The CIT, without discussing as to how the order of AO was erroneous and prejudicial to the interest of the revenue in the light of the reply to the show cause notice given by the assessee, set aside the order of AO with the direction to examine and verify the issues set out by CIT in the show cause notice u/s 263 of the Act. The following were the relevant observations of CIT :-

“ 4. In view of the above facts, the order dated 04.03.2015 passed u/s 143(3) of the I.T Act stands erroneous so far as prejudicial to the interest of revenue and therefore, a notice u/s 263 of the I.T Act, 1961 was issued to the assessee company on 30-09-2015 fixing the date of hearing on 09-10-2015. However no compliance was made. Further, the case was fixed for hearing on 03-12-2015 vide letter dated 28-10-2015. Mr. Amit Agarwal, CA& A/R appeared and sought adjournment and the case was adjourned to 06-1-2016. On the said date Mr. Amit Agarwal, A/R appeared and filed written submission. The submission of the assessee has been examined and found to be not satisfactorily.

5. In view of the above considering the facts of the case, I am of the view that the order dated 04.03.2015 passed u/s 143(3) of the I.T Act by the A.O stands erroneous so far as prejudicial to the interest of revenue and deserves to be set aside to the table of A.O with direction to examine and verify the above issue after giving sufficient opportunity of being heard to the assessee.”

11. Aggrieved by the order of CIT the assessee has preferred the present appeal before the Tribunal.

12. We have heard the submissions of the Id. Counsel for the assessee and the Id. DR. The Id. Counsel for the assessee submitted that all the facts with regard to the claim for deduction u/s 80IB(10) of the Act were furnished by the assessee and were examined by the AO. According to him therefore there was due application of mind by the AO on issue of deduction u/s 80IB(10) of the Act. The CIT in the impugned order has not set out as to how and what are the conditions for allowing deduction u/s 80IB(10) of the Act that were not satisfied. According to him therefore the conclusion of CIT that the issue of allowing deduction u/s 80IB(10) of the Act was not properly examined by the AO while concluding the assessment cannot be sustained.

13. With regard to the advance received from the customers, it was submitted that the CIT admits in the impugned order that the details of the advance received from the customers had been furnished by the assessee. The CIT's grievance is only that the AO has not examined the list of advance of customers by issuing notice u/s 133(6) of the Act or by making other enquiries. It was his submission that the manner of making enquiries by the AO cannot be the subject matter of examination by CIT in exercise of his powers u/s 263 of the Act. It was also submitted that there are no facts brought out on record by CIT in the impugned order to show that there exist circumstances which warranted issue of notice u/s 133(6) of the Act or making further enquiries.

14. It was also submitted by him that no reasons have been given by CIT in the impugned order for exercising powers u/s 263 of the Act. The order is also silent as to how the order of AO was erroneous and prejudicial to the interest of the revenue. It was therefore submitted by him that the impugned order deserves to be quashed.

15. The ld. DR relied on the order of CIT and submitted that the conditions for invoking powers u/s 263 of the Act were duly satisfied.

16. We have given a very careful consideration to the rival submissions. We are of the view that on both the issues of allowing deduction u/s 80IB(10) of the Act as well as the details of advance from the customers the AO had made due enquiries before completing the assessment u/s 143(3) of the Act. These details had already been set out in paragraphs 3 to 7 of this order. The order of the AO also makes reference to all the details having been perused by the AO. In particular there is a specific reference to the examination by the AO of deduction u/s 80IB(10) of the Act. The conclusion of CIT therefore that the AO failed to make proper enquiries before concluding the assessment, cannot be sustained. We are also of the view that the non issuance of notice u/s 133(6) of the Act in respect of advance received from the customers or not making any enquiries thereon by itself cannot be the basis to say that there was a failure on the part of AO to make proper and necessary enquiries. A reading of notice issued u/s 142(1) of the Act by the AO before completing assessment u/s 143(3) of the Act and the details furnished by the assessee in response to this notice clearly shows that the AO was fully conscious of the details of advance received from the customers furnished by the assessee. There are no facts brought out on record to show that further enquiry was required to be made by the AO on the details of advance from the customers furnished by the assessee.

17. We are of the view that order of CIT is a non-speaking order and does not discuss how the order of AO passed u/s 143(3) of the Act was erroneous and prejudicial to the interest of the revenue. In these circumstances, we quash the order passed u/s 263 of the Act and allow the appeal of assessee.

18. In the result the appeal of assessee is allowed.

Order pronounced in the Court on 31.07.2017.

Sd/-
[Waseem Ahmed]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 31.07.2017.
[RG PS]

Copy of the order forwarded to:

1. Bengal United Credit Belani Housing Limited, 225C, A.J.C.Bose Road, Kolkata-700020.
2. C.I.T., Kolkata-4, Kolkata.
3. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT Kolkata Benches