

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC/D” BENCH AHMEDABAD

BEFORE, SHRI S. S. GODARA, JUDICIAL MEMBER  
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA Nos. 447 & 448/Ahd/2015  
(Assessment Years: 2006-07 & 2007-08)

Mukeshbhai Vitthalbhai Patel,  
C/o V. P. Patel & Co. Adv., A-102,  
Akshardham, Shahibaug, Ahmedabad – 4

Appellant

Vs.

Income-tax Officer,  
Ward – 3, Gandhinagar

Respondent

PAN: ACKPP7110L

आवेदक की ओर से/By Assessee : Shri M. K. Patel, A.R.  
राजस्व की ओर से/By Revenue : Shri Antony Pariath, Sr. D.R.  
सुनवाई की तारीख/Date of Hearing : 15.01.2018  
घोषणा की तारीख/Date of  
Pronouncement : 16.01.2018

**ORDER**

**PER S. S. GODARA, JUDICIAL MEMBER**

These two assessee's appeals for assessment years 2006-07 and 2007-08 arise against the CIT(A), Gandhinagar's separate orders, both dated 12.11.2014 in case nos. CIT(A)/GNR/541/2013-14 & CIT(A)/GNR/542/2013-14, upholding Assessing Officer's identical action initiating reopening proceedings thereby disallowing Section 80IB(10) deduction of Rs.4,04,147/- and Rs.1,15,370/-; respectively, in proceedings u/s. 144 r.w.s. 148 of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case files perused.

2. Learned counsel representing assessee first of all submits that he does not wish to press for former identical ground challenging validity of reopening in both the impugned assessment years. The said former legal ground is accordingly rejected as not pressed.

3. We come to latter identical issue on merits pertaining to Section 80IB(10) deduction claimed at assessee's behest as declined in both the lower proceedings. The project in question is in the name and style of "Shalin Tenements". Learned counsel is very fair in the beginning itself in submitting that both the lower authorities have followed their respective orders for assessment years 2005-06 denying a similar claim qua the very residential project. He states that assessee's appeal for preceding assessment year 2005-06 is pending before this tribunal. We directed the registry to find out necessary details of assessee's alleged appeal stated to be pending. We are informed that a co-ordinate bench in assessment year 2005-06 had decided assessee's appeal ITA No. 372/Ahd/2009 remitting the very issue back to the Assessing Officer on 22.07.2011. Case records in both these appeals reveal that the Assessing Officer had already finalized consequential proceedings well before issuing 148 notices in question. There is no other appeal pending in this tribunal as per our records. We therefore uphold the CIT(A)'s findings under challenge denying the Section 80IB(10) deduction in question with following observations:

*"5. The second & third grounds of appeal are against the action of the AO in making addition of Rs.4,04,2010/-*

*5.1 The facts of the case is that the claim made by the appellant u/s 80IB(10) of Rs.12,71,980/- and u/s 40A(3) of Rs.80,000/- was rejected by A.O. in the original orders passed u/s. 143(3) for AY 2005-06. The appellant preferred appeals before CIT(A), Gandhinagar, who upheld the decision of the AO denying the claim. The matter then was taken before the Hon'ble ITAT, 'B' Bench, Ahmedabad who while disposing the appeal in ITA No. 372/Ahd/2009 dated 22/7/2011 for AY 2005-06 discussed the issue in detail regarding allowability of claim of the assessee restored the matter to the file of the AO for fresh adjudication with the following directions:*

*"7, After hearing both the parties and perusing the record and also the assessment order for the assessment order 2004-05, it is not dear whether the claim of the assessee u/s 80IB(10) during the AT 2004-05 was in respect of the same project- The matter is restored back to the file of Assessing Officer for*

*fresh adjudication to give the assessee one more opportunity to substantiate his claim before the A.O."*

*The AO has relied on the order passed for AY 2005-06, wherein similar addition had been made, which has been confirmed, Relying on the view taken in AY 2005-06, AO disallowed the claim of the appellant u/s 80IB(10) of the Act.*

*5.2 Appellant in the written submission has contended before me as under:*

*"Being aggrieved by an order passed by the ld. Assessing Officer, Wd-3, Gandhinagar (hereinafter referred as the A.O.) dt.06-03-2014; the appellant has preferred an appeal on the grounds of appeal appended with the appeal memo, in support of the said grounds the appellant hereby submit the facts of the case as under.*

*1) That appellant has been engaged in construction and development of land since long. It has been assessed to income tax since last 20 years.*

*2) The appellant had carried out the construction works of residential premise as per approved plan under the name Shalin Tenements. The land area of said project is more than 1 acre and residential unit constructed are also less than 1500 sq.ft., which was started from May 2002 (A photocopy of permission is encl. herewith), (pl. refer pg.34/35).*

*3) The appellant has been maintaining books of account regularly as per the provision of income tax act and got it audited.*

*4) That a return of income for the A.Y. 2006-07 and 2007-08 furnished on total income at Rs.209320 and Rs.215250/- after claiming the deduction of Rs.404170 and Rs.115370/- under the provision of section 80 IB(10) of Income Tax Act, as all the conditions stipulated under the provision has been fully satisfied, in return of income we enclosed copy of audit report and form 10CCB as per provision.*

*5) it is note worthy the instant case has been restored back by hon'ble ITAT for the A.Y. 2005-06, with clear direction to verify whether the project is same or not as claimed in earlier years. The ld. A.O. had ignored the cogent evidences / audited books of account and clear direction given by the ITAT and reopened the case on mistake of agency of state government with the above set of the facts, we would like to submit as under. Ground of Appeal no.1*

*"The Ld.A.O. has erred on facts and in laws in disallowing the claim under the provision of section 80IB(10) of the act; where the requisite conditions have been fully satisfied, hence the same may please be deleted."*

*The assessee had carried out the development and construction works of the housing scheme (Shalin Tenements) under the name M/s. Mukesh Organizers, as per the approved plan on the land more than 1 acre. The housing project approved by Collector on dt.26-06-2002. It has commenced the construction works onward June 2002. The housing project was completed in Nov. 2007 (i.e. prior to dt.31-03-2008). Thus all the conditions stipulated in the provisions of section 80IB(10) of the act have been fully satisfied, hence the said deduction has been granted in the preceding years.*

*During the course of assessment proceeding of preceding year, we produce all the evidences before the AO and he accepted the same and granted the deduction under the said provisions in earlier years. There has been*

*amendment w.e.f 1-04-2005 in said provision; as per the said provision the housing project approved onward said date are required to submit the project completion certificate.*

*During the course of reassessment proceeding, we furnished the summary of members year wise collection (pi. refer page no.62); which clearly indicates there had been no any collection onward Nov. 2007 as the housing project completed at the relevant time, we also submitted the copy of Lay out plan of housing project and brochure of the scheme (pi. refer page no.36 to 38); which clearly indicates the housing project consist by 32 residences, the summary of all 32 members collection from 2002 to 2007 and conjoin reading of aforesaid evidences clearly show the project is one only.*

*The hon'ble ITAT has clearly directed that the ld.AO is to verify the claim has been for the same project or not wide para -7 of said order, which reproduced hereunder.*

*"After hearing both the parties, and perusing the record and also the assessment order for the A.Y. 2004-05, it is not dear whether the claim of the assessee u/s 80IB(10) during the A.Y. 2004-05 was in respect of the same project."*

*Further, the other contemporaneous evidences like as agreement entered into at initial stage with the members (pg-39 to 45) and they formed the NIC (The Shalin co-op, hous. service soc. Ltd) for the proper administration on getting possession of their booked premises clearly indicates all the members have been residing in their new abode at Shalin Tenements prior to Dec.2007, the photocopy of certificate issued by the Ragistar of Sahakari Mandli and audit report signed by the Government auditor for the first year from dt. 1-4-2007 to 31-03-2008 enclosed herewith (pl. refer page no.63 to 77); which clearly transpires the project completed well before the stipulated time limit.*

*The other direct evidence in regard to project completion also available with the ld.AO in form of next years return of income; which clearly indicates no any such deduction claimed onward A.Y. 2009-10. even for the A.Y.2008-09 also the assessee had not claimed the deduction, though he was eligible for the same, in view of the smallness of the amount (pi. refer page no.97 to 100). Thus the audited books of account and audit report along with form 10CCB signed by ld. CA could not be ignored in cursory manner, (pl. refer pg 8 to 33 and 81 to 96).*

*Now, in regard to certificate issued by the Vavol Gram Panchayat, which appears to contain some error prima facie, which occurred on account of their mistake (pl. refer page no. 14 of Asst. order). The said mistake might be occurred and forgot to mentioned the word "duplicate" on it, the assessee had simply sought a certificate in regard to when the members have resided and paid their house tax first time on the basis of their record, with a view to substantiate the project completed in Nov.2007.*

*It appears the latter pad used, seal pressed and signed by the existing sarpanch clearly show the signing person is not much educated and aware of such works, thus the certificate received from the state agency is not bogus as held by the ld.AO in body of order. The ld. AO had misinterpret whole issue*

*and draft very lengthy assessment order which contain more than 18 pages. In any case the ld.AO could have informed the concerned higher authority in this regard. The ld.AO should ask for produce other government agency proof in regard to completion of project.*

*Considering above cogent evidences, it is ample clear the housing project completed well before the stipulated time limit, the other conditions have been also fulfilled and accepted by the ld.AO the audit report and such evidences also reveals the assessee had constructed / developed only one project from 2002 to 2007, as directed by the hon'ble ITAT.*

*IN VIEW OF THE above, the we rely on following case laws.*

*1. CIT Vs. Radhey developers - (2012) 341ITR 403 (Guj.).*

*2. Medha Constructions p. Ltd. - (2014) 41 CCH 007 Hyd trib.*

*"it is held - Conclusion - Even where the assessee was not required to furnish Completion certificate, since project was approved before 01-04-2005 and completed on dt.31-03-2008.....verify fact relating to deviation of site plan."*

*PRAYER : the appellant most respectfully urge that -  
the claim deduction u/s 8016(10) may please be allowed and grant  
any other relief which may deem fit proper and oblige."*

*5.3 I have considered the facts of the case, assessment order and the submission made by the appellant.*

*On careful consideration of the facts, I find that similar issue has been decided by me for AY 2005-06 in the following words:*

*"5.2 I have considered the facts of case, assessment order and grounds of appeal. The AO after giving the opportunity to the appellant and considering the order of the Hon'ble ITAT in the case of the appellant and order of the CIT(A) GNR and submissions made by the appellant, the copy of agreement and all details/documents/clarifications etc. furnished during the assessment proceedings, the AO held that the appellant was not eligible for deduction u/s. 80IB(10) of I. T. Act. The AO in the assessment order has mentioned that CIT(A) had also confirmed the disallowance as the appellant failed to substantiate the completion of the project. The appellant has failed to substantiate with evidences regarding the completion of project, which is one of the conditions to be fulfilled for claiming deduction u/s 80IB(10). Further, AO has not accepted the claim of the appellant that as claim was allowed in AY 2004-05, it should be allowed in AY 2005-06 was also not allowed by the AO since the appellant had argued before the Hon'ble ITAT that such claim is allowed in AY 2004-05 in respect of the same project. The AO held that proceedings for each assessment year is a separate proceedings. I find that AO has reexamined all aspect of the issue in appeal related to the claim of 80IB(10) of the Act. Again, appellant has failed to furnish 'Certificate of Project Completion' and therefore, the claim made by the appellant of Rs.12,71,980/- is disallowed and added to the total income.*

*As narrated in para.2 of this order, despite granting numerous opportunity of being heard to the appellant, he has failed to attend before me to rebut the findings of the AO with documentary evidences. In absence of documentary evidences, the claim of the appellant cannot be allowed. Since, the AO has looked into the matter at length following the directions of the Hon'ble ITAT,*

*which is discussed in the assessment order, the addition made by the AO of Rs.12,71,980/- is hereby confirmed and the relevant ground of appeal is rejected. The addition made is therefore, held justified and is confirmed."*

*Since, the issue involved is similar to what I have decided for AY 2005-06, reproduced as above, the addition made by the AO for the AY 2006-07 of Rs.4,04,147/- is hereby confirmed."*

4. We therefore agree with learned Departmental Representative's contentions and reject assessee's latter substantive ground on merits as well.
5. These two assessee's appeals are dismissed.

[Pronounced in the open Court on this the 16<sup>th</sup> day of January, 2018.]

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER  
Ahmedabad: Dated 16/01/2018

Sd/-  
(S. S. GODARA)  
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।