

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “A” BENCH**

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 2546/AHD/2014  
(Assessment Year: 2007-08)**

<b>Income Tax Officer, Ward- 9 (1), Ahmedabad</b>	<b>V/S</b>	<b>M/s. Sujal Developers 1<sup>st</sup> Floor, Sanskrut, Old High Court, Off Ashram Road, Ahmedabad</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AAMFM1427H**

**Appellant by : Shri K. Madhusudan, Sr. D.R.  
Respondent by : Shri Bharat S. Shah, A.R.**

**(आदेश)/ORDER**

Date of hearing : 26 -10-2017

Date of Pronouncement : 27-10-2017

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:**

1. This appeal by the Revenue is preferred against the order of the Ld. CIT(A)-XV, Ahmedabad dated 19.06.2014 pertaining to A.Y. 2007-08.

2. The only grievance of the revenue is that the ld. CIT(A) erred in deleting the penalty of Rs. 46,12,897/- levied u/s. 271(1)(c) of the Act.
3. The roots for the levy of penalty lie in the assessment order dated 24.12.2009 framed u/s. 143(3) of the Act. The assessee is a builder and real estate developer and for the year under consideration in its return of income filed on 27.10.2007, the assessee had claimed deduction of Rs. 1,37,07,361/- u/s. 80IB(10) of the Act.
4. After thorough scrutiny of the claim of the assessee, the A.O. denied the claim of deduction u/s. 80IB of the Act and penalty proceedings were separately initiated.
5. Since the Assessing Officer was convinced that by claiming the deduction u/s. 80IB(10) of the Act, which was otherwise not eligible to the assessee, the A.O. levied penalty u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income and computed the penalty at Rs. 46,12,897/-.
6. Assessee carried the matter before the ld. CIT(A) and got the relief.
7. Facts of the case show that when the claim of deduction was denied by the A.O., the matter travelled up to the Tribunal and the Tribunal vide in ITA Nos. 2427/Ahd/2010 & 552/Ahd/2011 restored the matter to the files of the ld. CIT(A) with a direction to decide the claim of deduction afresh.

8. As per direction of the Tribunal, the Id. CIT(A) vide order dated 09.09.2016 considered the issues on merits and allowed the claim of deduction u/s. 80IB(10) of the Act.
9. “Sublato Fundamento Cadit Opus”- since the foundation has been removed, the super structure must fall. Appeal filed by the Revenue is accordingly dismissed.

Order pronounced in Open Court on 27 - 10- 2017

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Ahmedabad: Dated 27s/10/2017

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

Sd/-

**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad