

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1345/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

The Dy. Commissioner of Income Tax,
Circle 14, Pune

.... अपीलार्थी/Appellant

Vs.

M/s. Marigold Premises Pvt. Ltd.,
S.No.15, Vadgaonsheri,
Kalyani Nagar,
Pune – 411014

.... प्रत्यर्थी / Respondent

PAN: AABCM2608J

अपीलार्थी की ओर से / Appellant by : Shri Mukesh Jha
प्रत्यर्थी की ओर से / Respondent by : Shri Dharmesh Shah

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| सुनवाई की तारीख / Date of Hearing : 12.04.2018 | घोषणा की तारीख / Date of Pronouncement: 27.04.2018 |
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the Revenue is against the order of CIT(A)-7, Pune, dated 01.04.2016 relating to assessment year 2011-12 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The Revenue has raised the following grounds of appeal:-

1. *Whether on the facts and in the circumstances of the case and in law, the Id CIT(A) has erred in allowing the deduction u/s 80IA(4)(iii) of the I.T. Act, 1961, when there was no notification at the time of completion of the assessment. (The notification at the time of completion of the assesment. (The notification no.209/2007/F.NO.178/78/2007-ITA-I of CBDT has been actuality issued on 03/07/2007).*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in holding that the assessee is eligible for deduction u/s 80IA(4)(iii) of the I.T. Act, 1961 though the specific condition in the notification pertaining to the assessee regarding the number of units was not fulfilled.*
 3. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in not considering the ratios of the decisions of the Hon'ble ITAT for the A.Y. 2003-04 (ITA No.723/PN/2007) dated 24/06/2011 as decided by the decision of the Third Member dismissing the assessee claim for deduction u/s 80IA.*
 4. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in holding that the assessee is eligible for deduction u/s 80IA(4)(iii) of the I.T. Act, 1961, for the year under consideration when PMC has issued completion certificate for only 6 units as against minimum of 105 units specified in the notification dated 03/07/2007.*
 5. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in holding that the assessee was eligible for deduction u/s 80IA(4) of the I.T. Act, 1961 on rental income.*
 6. *As per the norms IPS 2002, the condition of minimum number of units should have been completed for availing deduction u/s. 80IA, was not fulfilled.*
 7. *The condition, that no single entity or its related enterprise can occupy more than 25% of the allocable area was violated.*
 8. *The assessee should have commenced operation as on 31.03.2009. However, this condition is violated.*
 9. *The appropriate completion certificate has not been obtained from the relevant authorities.*
 10. *The condition that a minimum number of 30 units should be operational for availing the benefit was not met since 31.03.2010 only, 16 units were operational.*
 11. *For the facts and such other reasons as may be urged at the time of hearing, the order of the Ld. Commissioner of (Appeals), Pune may be vacated and that of the Assessing Officer be restored.*
3. The Revenue is in appeal against the order of CIT(A) in holding the assessee to be eligible for deduction under section 80IA(4)(iii) of the Act.

4. The learned Authorized Representative for the assessee pointed out that the issue raised in the present appeal has been decided in favour of assessee for several assessment years starting from assessment year 2005-06.

5. The learned Departmental Representative for the Revenue on the other hand, stressed that the issue was decided by the Tribunal against the assessee in assessment year 2003-04.

6. We have heard the rival contentions and perused the record. Briefly, in the facts of the case, the assessee was engaged in the development, sale, lease and maintenance of property for residential and commercial purpose and also in the development of software park. The assessee owned two undertakings carrying on development, maintenance and operation of industrial park and development of residential and commercial complexes. The assessee had maintained separate books of account for both the undertakings. The assessee had claimed deduction under section 80IA(4)(iii) of the Act in respect of income from development, maintenance and operation of industrial park as per Industrial Park Scheme (IPS), 2002. The assessee was denied deduction under section 80IA(4) of the Act by the Tribunal in assessment year 2003-04 in ITA No.723/PN/2007, vide order dated 27.07.2011. The copy of said order is placed at pages 79 to 81 of Paper Book. The Hon'ble Bombay High Court in ITA No.484 of 2012 vide order dated 26.03.2013 has admitted the appeal of assessee, which is pending for disposal, copy of said order is placed at pages 82 and 83 of Paper Book. Thereafter, assessment for assessment year 2004-05 was completed under section 143(3) of the Act and deduction claimed was denied. The Tribunal in ITA No.536/PN/2012, vide order dated

26.11.2014 has upheld the addition, however, directed the Assessing Officer to follow the decision of Hon'ble Bombay High Court in view of declaration filed by the assessee under section 158A(1) of the Act. Meanwhile, the assessment order under section 143(3) of the Act was completed for assessment year 2005-06 on 28.12.2007. The copy of said order is placed at pages 112 to 118 of the Paper Book. The Assessing Officer notes that the undertaking had to be approved by the Ministry of Commerce & Industries in the Central Government. The terms and conditions of the scheme were amended and the assessee had complied with all conditions in assessment year 2005-06, relating to notification of CBDT for the first time. The Assessing Officer vide para 5 also notes the records for assessment years 2003-04 and 2004-05. Since the assessee had satisfied the requirement regarding number of units after the same was adopted at 105, the Assessing Officer held the assessee to have satisfied the conditions for assessment year 2005-06. Consequently, the Assessing Officer allowed deduction under section 80IA(4)(iii) of the Act to the assessee as per clause (6) of IPS, 2002. Thereafter, the Assessing Officer under section 143(3) of the Act, order dated 31.03.2010 for assessment year 2007-08 and vide order dated 22.10.2011 for assessment year 2009-10 allowed the deduction claimed under section 80IA(4)(iii) of the Act. The assessee for the year under consideration i.e. assessment year 2011-12 had claimed the deduction under section 80IA(4)(iii) of the Act at ₹ 62,38,339/- for which form No.10CCB was filed. The copy of the same is placed on record at pages 127 to 132 of the Paper Book. However, the Assessing Officer denied the claim of deduction to the assessee on the ground that it was not clear from the computation of income whether the assessee had derived any income from the eligible business of software park.

7. Before the CIT(A), the assessee contended that the Assessing Officer had ignored the Profit and Loss Account relating to software business filed vide letter dated 14.02.2014. The assessee also referred to the computation of income, in which the assessee had earned income by way of rent and maintenance charges from software park amounting to ₹ 1,05,89,042/-. The assessee also filed the net rental income and business income eligible for deduction under section 80IA(4)(iii) of the Act as part of its submissions, which are reproduced at page 3 of appellate order. The CIT(A) in view of submissions of assessee and in view of allowing the claim of assessee in earlier years, allowed deduction under section 80IA(4)(iii) of the Act. The relevant findings of CIT(A) are in para 6.3 which is being referred to, but not being reproduced for the sake of brevity. In the totality of the above said facts and circumstances, where the learned Departmental Representative for the Revenue has failed to controvert the findings of CIT(A) in para 6.3 and in view of evidences filed by the assessee in audit report in form No.10CCB, we hold that the assessee is entitled to claim the aforesaid deduction under section 80IA(4)(iii) of the Act.

8. Before parting, we may also note that despite the disallowance of deduction in assessment years 2003-04 and 2004-05, the Assessing Officer himself had observed that the assessee had fulfilled all the conditions in assessment year 2005-06 and allowed the deduction to the assessee in the said year and also in subsequent years. The assessee has been allowed the aforesaid deduction by way of assessment order passed under section 143(3) of the Act for assessment years 2005-06, 2007-08 and 2009-10.

Consequently, we find no merit in the grounds of appeal raised by the Revenue and the same are dismissed.

9. In the result, the appeal of Revenue is dismissed.

Order pronounced on this 27th day of April, 2018.

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| Sd/- (ANIL CHATURVEDI) | Sd/- (SUSHMA CHOWLA) |
| लेखा सदस्य / ACCOUNTANT MEMBER | न्यायिक सदस्य / JUDICIAL MEMBER |

पुणे / Pune; दिनांक Dated : 27th April, 2018.

GCVSR

आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-7, Pune;
4. The Pr.CIT-6, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune