

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.925, 926 & 927/PUN/2016
निर्धारण वर्ष / Assessment Years : 2006-07, 2007-08 & 2008-09

Jt. Commissioner of Income Tax (OSD),
Circle – 4, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

Prithvi Erectors & Developers Pvt. Ltd.,
585/49, Priyamvada,
Gultekdi, Salisbury Park,
Pune – 411037

PAN : AABCP1005E

.....प्रत्यर्थी / Respondent

Assessee by : Shri Deven Sheth
Revenue by : Shri Ajay Modi

सुनवाई की तारीख / Date of Hearing : 21-05-2018

घोषणा की तारीख / Date of Pronouncement : 23-05-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These three appeals have been filed by the Revenue against the order of Commissioner of Income Tax (Appeals)-3, Pune dated 25-02-2016 common for the assessment years 2006-07, 2007-08 and 2008-09.

Since, the grounds raised in all these appeals are identical and are arising from same set of facts, these appeals are taken up together for adjudication and are being disposed of vide this common order.

2. Shri Deven Sheth appearing on behalf of the assessee submitted at the outset that the grounds raised in these three appeals by the Revenue are identical to the one raised in the appeal by Department before the Tribunal for assessment year 2010-11. The assessee had claimed deduction u/s. 80IB(10) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") in respect of housing project 'Krishna Kamal'. The Revenue for the first time denied the benefit of deduction in the assessment year 2010-11. Thereafter, the assessments for assessment years 2006-07 to 2009-10 were reopened and the deduction u/s. 80IB(10) granted earlier in original assessment proceedings was withdrawn. The assessee carried the matter in appeal for assessment year 2010-11 before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) granted substantial relief to the assessee holding the assessee eligible for claiming deduction u/s. 80IB(10) of the Act. However, pro rata deduction in respect of two residential units was denied on account of violation of covered area beyond 1500 sq. ft. Against the order of Commissioner of Income Tax (Appeals) dated 29-08-2014 for assessment year 2010-11, both, the assessee and the Revenue filed appeals before the Tribunal. The Revenue in its appeal ITA No. 2207/PUN/2014 raised the grounds similar to the one raised in the present set of appeals. The Tribunal vide order dated 14-07-2017 dismissed the appeal of Revenue and upheld the findings of Commissioner of Income Tax (Appeals). The ld. AR submitted that since

the grounds raised in the present set of appeals by the Revenue are identical, therefore, the same are liable to be dismissed.

3. Shri Ajay Modi representing the Department fairly admitted that the grounds raised by the Revenue in the present set of appeals are similar to the one raised in ITA No. 2207/PUN/2014 for the assessment year 2010-11 by the Department.

4. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The Revenue in all the three appeals have assailed the order of Commissioner of Income Tax (Appeals) in allowing deduction u/s. 80IB(10) of the Act in respect of project 'Krishna Kamal'. For the sake of completeness the grounds raised by the Revenue in assessment year 2006-07 are reproduced here-in-below:

- “1) The Order of the Ld. CIT(A) is contrary to law and to the facts and circumstances of the case.*
- 2) The Ld. CIT(A) erred in allowing deduction u/s 80IB (10) in respect of project "Krishna Kamal".*
- 3) The Ld. CIT(A) erred in not appreciating the import of section 80IB(10) which speaks about sanction to the 'housing project' and not to the individual buildings in the projects.*
- 4) The Ld. CIT(A) erred in not appreciating the fact that building R is a part of project i.e. " Krishna Kamal" which was approved on 23.12.2004 and the same has not been completed by 31.03.2009, thus violating the conditions provided in clause (a) to section 80IB (10) of the Act.*
- 5) The Ld. CIT(A) erred in allowing pro rata claim of deduction u/s 80IB(10) in respect of eligible buildings in the project "Krishna Kamal" in spite of the facts that building R, though was part of the project i.e. "Krishna Kamal" which was approved on 23.12.2004, is not completed with the time stipulated in sec 80IB(10)(a)(ii) of the Act and without appreciating the fact that jurisdictional High Court in the case of CIT Vs. Brahma Associates, 333 ITR 289 held deduction is allowable on the entire project approved by the local authority and there is no question of allowing deduction to a part of the projects.*
- 6) The Ld. CIT(A) erred in allowing pro rata claim of deduction u/s 80IB (10) in respect of eligible flats in the project "Krishna Kamal" in spite of the fact that*

built up area of two flats of the projects exceeded the prescribed area of 1500 sq ft, violating clause (c) to section 80IB (10) of the Act and without appreciating the fact that jurisdictional High Court in the case of CIT Vs. Brahma Associates, 333 ITR 289 held deduction is allowable on the entire projects approved by the local authority and there is no question of allowing deduction to a part of the project.

7) *The appellant craves leave to Add, Amend, alter or delete any of the above grounds of appeal during the course of appellate proceedings.”*

Identical grounds have been raised by the Revenue in the assessment years 2007-08 and 2008-09.

5. We observe that in assessment year 2010-11, the Department has assailed the findings of Commissioner of Income Tax (Appeals) by raising similar grounds. The relevant extract of the order of Tribunal in ITA No. 2207/PUN/2014 for assessment year 2010-11 decided on 14-07-2017 wherein the issues raised by the Department in appeal have been culled out is reproduced here-in-below :

“3. The Department in its appeal has raised 7 grounds of appeal. The ground Nos. 1 and 7 are general. The ground Nos. 2 to 5 are with respect to Commissioner of Income Tax (Appeals) allowing the benefit of deduction u/s. 80IB(10) despite the fact that Building R which is part of project ‘Krishna Kamal’ approved on 23-12-2004 was not completed by the assessee till the due date of completion i.e. 31-03-2009.

3.1 In ground No. 6 the Revenue has assailed the findings of Commissioner of Income Tax (Appeals) in granting pro-rata claim of deduction u/s. 80IB(10) in respect of eligible flats, despite the fact built up area of two flats in the project exceeded the prescribed limit of 1500 sq. ft. and has violated the provisions of section 80IB(10)(c) of the Act.”

From the perusal of above it is apparent that the grounds raised by Revenue in present set of appeals are similar to the issues raised in assessment year 2010-11.

6. The Co-ordinate Bench dismissed the grounds raised by the Revenue by observing as under :

“8. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. We have also examined the documents referred to by the ld. AR during the course of

making submissions. The first issue raised by the Department in appeal is with respect to allowing deduction u/s. 80IB(10) to the housing project 'Krishna Kamal' developed by the assessee. Undisputedly, original layout plan of the project comprised of four buildings i.e. P, Q, R and S. Subsequently, the assessee shelved the construction of Building S. The assessee only constructed Buildings P and Q with two wings each i.e. P1, P2, Q1 and Q2. The assessee obtained revised commencement certificate in respect of Building R. The said commencement certificate was conditional and valid for the period of one year. Later on the assessee abandoned the construction of Building R and obtained completion certificate in respect of Buildings P and Q in the year 2006. The Buildings P and Q were comprising of 96 flats. The assessee claimed the benefit of deduction u/s. 80IB(10) in respect of flats sold in the aforesaid two buildings of the project 'Krishna Kamal'. The ld. AR has pointed that the assessee has claimed deduction u/s. 80IB(10) in respect of project 'Krishna Kamal' in the last three assessment years on same set of facts. The Department has allowed the claim of assessee in the earlier assessment years in scrutiny assessment proceedings. In the assessment year under appeal, there has been no change in the facts and circumstances.

We find that the Commissioner of Income Tax (Appeals) after thoroughly examining the facts of the case and after placing reliance on the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Vandana Properties reported as 353 ITR 36 and the decision of Pune Bench of the Tribunal in the case of Rahul Construction Vs. Income Tax Officer in ITA No. 1250/PN/2009 decided on 30-03-2012 allowed the claim of assessee. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) on this issue. Buildings P and Q of the housing project 'Krishna Kamal' on standalone basis satisfy all the conditions stipulated u/s. 80IB(10) of the Act and hence, the assessee is eligible to claim deduction under the said section in respect of aforesaid buildings. Since, construction of Building R has been withheld by the assessee, it would not impinge the right of assessee to claim benefit of deduction u/s. 80IB(10) on remaining project. Accordingly, the ground Nos. 2 to 5 raised in the appeal by the Department are dismissed.

9. In ground No. 6, the Department has assailed the findings of Commissioner of Income Tax (Appeals) in granting pro-rata deduction u/s. 80IB(10) despite the fact that two residential units i.e. P1-25 and Q1-21 were allegedly exceeding the prescribed limit of 1500 sq. ft. The assessee has raised corresponding ground in its appeal alleging that the Assessing Officer in an arbitrary manner at the back of the assessee has taken the measurement of aforesaid flats. As per the certificate of Architect built up area of both the flats is less than 1500 sq. ft.

10. It has been contended before us that the Assessing Officer without issuing any show cause notice at the back of the appellant has taken the measurement of flats P1-25 and Q1-21. On the basis of measurement so taken the Assessing Officer has come to the conclusion that the built up area of aforesaid flats is more than 1500 sq. ft. and held that the assessee has

violated the provisions of section 80IB(10)(c) of the Act. The ld. AR has drawn out attention to the certificate of Architect at page 47 of the paper book. A perusal of the said certificate show that the residential unit P1-25 is having total area of 1469.50 sq. ft. including terrace and the area of residential unit Q1-21 is 1460 sq. ft. including terrace. It has been contended that no opportunity of hearing was afforded to the assessee after measurements were taken by the Assessing Officer. The action of the Assessing Officer in taking measurements of the flats at the back of assessee is against the principles of natural justice. The Assessing Officer should have issued show cause notice and should have joined assessee or his representative while taking measurements. The Assessing Officer further without affording opportunity of hearing to the assessee to rebut the measurements taken proceeded on to make disallowance. A perusal of the assessment order shows that the Assessing Officer has not rejected the certificate of Architect dated 27-11-2007 placed on record by the assessee wherein the measurements of the residential unit in question have been given. We are of the considered view that in the light of facts and the documents on record the action of the Assessing Officer was unjustified and violative of principles of natural justice. Hence, the disallowance made by the authorities below in respect of residential units P1-25 and Q1-21 is liable to be set aside.

11. Even otherwise the provisions of section 80IB(10) of the Act were amended w.e.f. 01-04-2005, whereas, the assessee had obtained certificate of commencement on 23-12-2004 i.e. prior to the amendment. Hence, the amended provisions of section 80IB(10) of the Act would not apply on the sanctions taken prior to the date of amendment. Similar view has been taken by the Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. Brahma Associates (supra). Thus, in view of the facts of the case and the law laid down by the Hon'ble Bombay High Court, ground No. 6 raised in the appeal by the Department is dismissed and the appeal of the assessee is allowed.

12. In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is allowed."

7. Both the sides are unanimous in stating that the issues involved in the present set of appeals is identical to the one decided earlier by the Co-ordinate Bench in assessee's own case for assessment year 2010-11. No material has been brought on record by the Revenue to distinguish the view already taken by the Tribunal. We see no reason to take a contrary

view. Accordingly, the impugned order is upheld and all the three appeals by the Department are dismissed.

8. In the result, all the three appeals by the Revenue are dismissed being devoid of any merit.

Order pronounced on Wednesday, the 23rd day of May, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 23rd May, 2018

RK

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)-3, Pune
4. The Pr. C.I.T.-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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