

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA.No. 6421/MUM/2013 (A.Y: 2010-11)**

Asst. Commissioner of Income  
Tax, Central Circle – 31,  
Room No. 413, 4<sup>th</sup> Floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400 020

v. M/s. Kukreja Construction Co.,  
Lalaasis, Plot No. 210,  
11<sup>th</sup> Road, Chembur  
Mumbai – 400 071

**PAN No: AABFK 0413 C**

**(Appellant)**

**(Respondent)**

**Assessee by : Shri J.P. Bairagra**

**Revenue by : Shri M.V. Rajguru**

**Date of Hearing : 08.03.2018**

**Date of Pronouncement : 31.05.2018**

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income-tax (Appeals)–40, Mumbai dated 30.08.2013 for the Assessment Year 2010-11.

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

*1. "The Ld.CIT(A) has erred in directing that the disallowance of proportionate expenses to be made on the cost incurred on WIP during the relevant financial year whereas there is either meagre cost of WIP or no cost incurred on WIP "*

*2. "The Ld.CIT(A) has erred in not appreciating the fact that assessee is following Project Completion Method and profit is declared in the year when*

*the project is completed and in that relevant financial year either there remains no expenditure or very little expenditure on WIP.*

*3. "The decision of the Ld.CIT(A) is contrary to his own inference that "the most natural presumption of applying the indirect expenses would be in proportionate in the respective turnovers/WIPs".*

*4. "The Ld.CIT(A) has erred in allowing the assessee's contention that the other income shown the trading account is eligible for deduction u/s.80IB(10) of the I.T. Act, 1961 without appreciating the fact that the other income is not derived from the Construction activity but from the amenities/other services provided."*

*5. The Appellant craves to leave, to add, to amend and / or to alter any of the ground of appeal, if need be.*

*6. The appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-40, Mumbai, may be set aside and that of the Assessing Officer restored."*

3. At the outset, Learned Counsel for the assessee submitted that Ground Nos. 1 to 3 are in respect of disallowance of proportionate expenses i.e. allocation of expenses from work in progress and this issue came up before the Tribunal in the Assessment Years 2005-06 to 2007-08 and the Tribunal held that, the indirect expenses should be allocated on the basis of the work in progress. Copies of the orders are placed on record.

4. Ld. DR vehemently supported the orders of the Assessing Officer.

5. We have heard the rival submissions, perused the orders of the Authorities below and the Coordinate Bench decisions. This issue has been decided by the Coordinate Bench in assessee's own case by the Tribunal in ITA.No. 1469/MUM/2009 dated 29.06.2010 for the Assessment Year 2005-06 and held as under: -

“3. The assessee is in further appeal before the Tribunal questioning the method of allocation of indirect expenses against the profit from Orchid. Our attention was drawn to the order of the Tribunal in ITA No: 9136/Mum/2004 (assessment year 2001-02) dated 28.06.2007 in the case of M/s Ganga Developers, which is stated to be a Group company and it is contended that the Tribunal in this order has accepted in principle that indirect expenses should be apportioned to the various projects on the basis of the work in progress shown with regard to those projects. On the basis of this order it is submitted that in the assessee's case also the principle should be applied. The details of the work in progress in respect of the various projects were also furnished at page 14 of the Paper Book.

4. The learned Departmental Representative does not dispute the contention of the assessee that as held by the order of the Tribunal cited supra, the indirect expenses should be allocated on the basis of the work in progress. He however contended that the position should be factually verified,

5. On a careful consideration of the rival contentions, we are of the view that the issue having been decided by the Co-ordinate Bench in a Group case, the same should be followed in the present case also. Accordingly, respectfully following the order, we hold that the indirect expenses should be apportioned in proportion to the cost incurred on various projects during the year, as represented by the work in progress in the different projects. The figures supplied by the assessee before us however need verification. We therefore restore the issue to the file of the Assessing Officer for the limited purpose of verifying the figures of work in progress in the various projects undertaken by the assessee and thereafter to apply the rule laid down in the order of the Tribunal in the case of M/s Ganga Developers (supra). The appeal of the assessee is allowed in part with no order as to costs.”

### In the Assessment Year 2007-08 the Tribunal held as under:

“23. The Assessing Officer disallowed the certain indirect expenses for the purpose of deduction u/s 80-IB and applied the basis of allocation of indirect expenses as income earned by the assessee from various projects. The CIT(A) directed the Assessing Officer to allocate on the basis of expenses incurred on the project during the year by following the decision of this Tribunal in the case of Ganga Developers and Group concern in ITA no. 9136/Mum/2004 vide order dated 28.06.2007.

24. We have heard the Ld. DR as well as Ld. AR and considered the relevant material on record. The Ld. DR has relied upon the orders of Assessing Officer and submitted that the Assessing Officer has applied the income earned by the assessee from various projects as the basis for allocation of indirect expenses. On the other hand, the Ld. Authorized Representative has submitted that the CIT(A) has followed the decision of this Tribunal in the case of Ganga Developers and Group concern (supra) and further in assessee's own case for A.Y. 2005-06, the Tribunal had directed the Assessing Officer to adopt the indirect expenses in proportion to the cost incurred on the various projects during the year.

25. Having considered the rival submission as well as relevant material on record, at the outset we note that an identical issue has been considered and decided by this Tribunal in assessee's own case for A.Y. 2005-06 in ITA No. 1469/Mum/2009 vide order dated 29.06.2010 in para 5 as under:-

“5. On a careful consideration of the rival contentions, we are of the view that the issue having been decided by the Co-ordinate Bench in a Group case, the same should be followed in the present case also. Accordingly, respectfully following the said order, we hold that the indirect expenses should be apportioned in proportion to the cost incurred on various projects during the year, as represented by the work in progress in the different projects. The figures supplied by the assessee before us however need verification. We therefore restore the issue to the file of the

*Assessing Officer for the limited purpose of verifying the figures of work in progress in the various projects undertaken by the assessee and thereafter to apply the rule laid down in the order of the Tribunal in the case of M/s Ganga Developers (supra). The appeal of the assessee is allowed in part with no order as to cost.”*

*26. Accordingly, we direct the Assessing Officer to apply the same basis as directed by this Tribunal for A.Y. 2005-06 for allocation of indirect expenses among various projects for the purpose of deduction u/s 80-IB. We find that there is no error in the order of CIT(A) in directing the Assessing Officer to follow the ratio of the decision of this Tribunal in the case of Ganga Developers (supra).”*

6. Respectfully following the same, we direct the Assessing Officer to apply the decision of the Tribunal for the Assessment Years 2005-06 & 2007-08 to the issue in hand for the current Assessment Year also and accordingly allocate the indirect expenses among various projects in line with the decision of the Tribunal for the Assessment Years 2005-06 & 2007-08. The grounds are allowed for statistical purpose.

7. Learned Counsel for the assessee submitted that Ground Nos. 4 & 5 are in respect of whether other income is eligible for deduction u/s. 80IB of the Act or not and this issue was also considered by the Tribunal for the Assessment Years 2006-07 to 2008-09 and allowed the deduction u/s.80IB of the Act on certain incomes and excluding certain other incomes. Counsel pleaded that the same may be followed for the current Assessment Year also.

8. Ld. DR submitted that if applying the decision of the Tribunal, the other incomes as mentioned in Page No.10 of the Ld.CIT(A) order in the table at Sl.Nos. 3,7,9,10 &11 are to be excluded.

9. We have heard the rival submissions, perused the orders of the authorities below and the decision of the Coordinate Bench. We find that similar issue came up before the Tribunal for the Assessment Years 2006-07 to 2008-09 in assessee's own case and the Tribunal considered the issue as under:

*"12. The assessee received various charges namely development charges, electric meter charges, extra work charges, grill charges, legal charges, water meter charges, share money charges and society formation charges, Gas charges, car parking charges, interest received on delayed payments, video door monitor and maintenance for 12 months charges. The assessee claimed deduction u/s 80-IB in respect of these charges received from buyers of the flat. The Assessing Officer disallowed the claim of the assessee on the ground that above said items of other income had no direct nexus with assessee's core construction activity. Accordingly, the Assessing Officer held that the said income has not been derived from the construction activity but from amenities/other services provided by the assessee to the buyers and therefore, not eligible for deduction u/s 80-IB(10).*

*13. On appeal, the CIT(A) has confirmed the disallowance of deduction u/s 80-IB for both the A. Ys i.e. A. Y. 2006-07 and 2007-08.*

*14. Before us, the Ld. Authorized Representative of the assessee has submitted that the CIT(A) has followed the order for A. Y. 2006-07, wherein the other income received by the assessee was only in respect of share money, society deposit and society formation charges. Whereas the charges received by the assessee for these two years are regarding construction activity being development charges, extra work charges, legal charges for drafting the documents etc. Further the charges for Gas and Car parking as well as interest received on delayed payments cannot be regarded as other income which are received in respect of the property developed by the assessee and sold to the buyers and have direct nexus with the construction activity. He has further submitted that all these charges are collected in respect of project completed before handing over the project to society, therefore, there is a first degree nexus between the said income and construction activity/industrial undertaking. He has relied upon the decision of Hon'ble Supreme Court in the case of Liberty India Vs. CIT (317 ITR 218) as well as the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Syntel Limited in Income Tax Appeal nos. 1974, 1976 and 1978 of 2009 dated 15.12.2009. The Ld. Authorized Representative has also relied upon the decision of this Tribunal in the case of Tolaram & Co. dated 19.10.2011 for A. Y. 2006-07 and 2007-08. Thus the Ld. Authorized Representative has submitted that the claim of deduction u/s 80-IB in respect of the income received from the buyers should be allowed.*

*15. On the other hand, the Ld. DR has relied upon the orders of authorities below and submitted that these items of income has not direct nexus with the assessee's construction activity, therefore, they cannot be said to be the income derived from the construction business of the assessee but from the amenities and other services provided by the assessee which is not eligible for deduction u/s 80-IB.*

*16. We have considered the rival submissions as well as relevant material on record. For A.Y. 2006-07, the assessee has received the following income from the buyers of the flat in orchid project: -*

g	Share money	33,348
h	Society deposit	16,15,643
	Society formation charges	1,39,500
	Total	17,88,991

17. Whereas for the A.Y. 2007-08, the assessee has received the various income in respect of Luv Kush project and orchid project as under: -

Items of other income	Luv kush project	Orchid project
Car parking charges	2630000	-
Development Charges	1107516	53064
Extra work charges	-	77000
Electric meter charges	1427500	90000
Gas charges	348000	-
Grill charges	1147975	68320
Interest received	148115	-
Legal charges	82500	4500
Share money	-	2166
Water meter charges	-	44220
Maintenance 12 months	2262767	-
Video door monitors	1350000	-
Water meter charges	922930	-
Total other income	11427303	348270

18. We find that the development charges, extra work charges, grill charges, gas charges, car parking charges, interest received on delayed payments and video monitor door charges have the direct nexus with the construction activity of the assessee. The development charges are paid by the assessee to the local authorities and accordingly the same has to be recovered from the buyers. Therefore, this has a direct degree nexus with the construction / development activity of the assessee. Similarly, the extra work charges and grill charges are also directly connected with the construction and development activity of the project as part and parcel of the constructed property. The Gas charges are explained by the assessee is regarding the pipe gas fitting in the project and, therefore, this is part and parcel of the completed project. Car parking charges is in relation to providing the car parking along with project and, therefore, cannot be separated from the main project. Interest received on delayed payment from the buyers is also part of the sale proceeds of the project and, therefore, cannot be treated as the income from other activity. The video door monitor is a safety device provided under the project and, therefore, it is a part and parcel of the project. We further note that an identical issue has been considered by this Tribunal in the case of M/s Tolaram & Co. for A.Y. 2006-07 and 2007-08 vide order dated 19.10.2011 in para 6 to 9 as under: -

“6. We have heard the parties and perused the record. The Ld. Counsel took us through the paper book. more particularly, page no.2 and submits that the assessee has collected the development charges, electricity charges, worked done to the buyers of the flats etc, and the said receipts are having direct nexus with the project of the assessee. He, therefore, pleaded that the same may be included in the eligible profit. He, therefore, pleaded that the same may be included in the eligible profit. Per contra, the Ld. D.R. vehemently submits that it is an extra income to the assessee and as it has not a first degree income. The Ld. D.R. has supported the action of the authorities below. We find on page no.2 of the paper book that the assessee has given the break-up of 'other income' of Rs. 83,82,964/- which is as under: -

Particulars	Amount Rs.
Development charges	515,616.00
Electricity Charges	870,000.00
Extra Work	1,387,216.00
Interest received	336,892.00
Water charges	429,680.00
Society deposit	1,275,000.00
Society maintenance received	949,300.60
Share money	21,771.00
Society formation	88,500.00
Car parking charges	545,000.00
charges	494,739.00
Video door security charges	1,425,000.00
Legal charges	44,250.00
Total	8,382,964.00

7. Present assessee has collected the different charges from the flat buyers as builder for the specific purposes but as comparative expenditure is lesser hence, the balance credit was taken to the profit and loss account. No further description is available before us to clarify the nature of the receipts. So far as development charges are concerned, as explained by the Ld. Counsel the same are collected from flat buyers for the development purpose. In our opinion, the same has got direct nexus with the development of housing project. Same way, the following receipts are having direct nexus with the housing project.

Sr. No.	Particulars	Amount in Rs.
1.	Extra work	13,87,216.00
2	Interest from flat buyers for late payment	336,892.00
3.	Car parking	545,000.00
4.	Grill charges	494,739.00
5.	Video door security charges	1,425,000.00

8. in our opinion, the following receipts cannot be said to have first degree nexus with the housing project: -

Sr. No.	Particulars	Amount in Rs.
1.	Electricity charges	870,000.00
2	Society deposit	1,275,000.00
3.	Water charges	429,680.00
4.	Society maintenance received	949,300.00
5.	Share application money	21,771.00
6.	Society formation charges	88,500.00
7.	Legal charges	44,250.00
	Total	4,173,230.60

9. We, therefore, hold that to the extent of Rs. 4,173,230.60 referred to the above, the same should be excluded from the eligible profit and balance has to be treated as part of the profit derived from the housing project. The A.O. is accordingly directed to work out the eligible profit in the light of the above discussion. Accordingly, ground no. 2 is partly allowed.”

19. Accordingly, by following the rule of consistency, all income received in relation to the activity which are having direct nexus with the project as discussed above are eligible for deduction u/s 80-IB except share money, society formation charges, electricity meter charges, water meter charges, legal charges and maintenance charges for 12 months which are all post completion of project activity and cannot

*be treated as part of the construction project. Accordingly, the income in respect of above said work are not eligible for deduction u/s 80-IB. Since the other income received for A.Y. 2006-07 is only regarding society formation and share money, therefore, the same is not eligible."*

10. As could be seen from the above the Tribunal on analyzing the income received by the assessee and the proximity of such income with the business activity of the assessee directed to allow the deduction u/s.80IB of the Act on such incomes except share money, society, formation charges, electricity meter charges, water meter charges, legal charges and the maintenance charges. Respectfully following the said decision, we direct the Assessing Officer to allow deduction u/s. 80IB of the Act on the incomes except electricity meter charges, legal charges, water meter charges, gas charges and share money during the Assessment Year under consideration and recompute the income of the assessee accordingly. This ground of the Revenue is partly allowed.

11. In the result, appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the open court on the 31<sup>st</sup> May, 2018.

Sd/-  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 31/05/2017  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mum**