

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", 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.1164/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Income Tax Officer,
Ward 12(1), Pune

.... अपीलार्थी/Appellant

Vs.

M/s. Yash Associates,
401, 4th floor, Shreepal Chambers,
481/C, Shaniwar Peth,
Pune – 411030

.... प्रत्यर्थी / Respondent

PAN: AAIFY6149E

आयकर अपील सं. / ITA Nos.1330 & 1331/PUN/2017

निर्धारण वर्ष / Assessment Years : 2011-12 & 2013-14

The Income Tax Officer,
Ward 12(1), Pune

.... अपीलार्थी/Appellant

Vs.

M/s. Yash Associates,
401, 4th floor, Shreepal Chambers,
481/C, Shaniwar Peth,
Pune – 411030

.... प्रत्यर्थी / Respondent

PAN: AAIFY6149E

अपीलार्थी की ओर से / Appellant by : Shri Rajeev Kumar, CIT

प्रत्यर्थी की ओर से / Respondent by : Shri Nilesh Khandelwal

सुनवाई की तारीख / Date of Hearing : 26.09.2018	घोषणा की तारीख / Date of Pronouncement: 28.09.2018
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आदेश / ORDER**PER SUSHMA CHOWLA, JM:**

This bunch of three appeals filed by Revenue are against respective orders of CIT(A), Pune-5, dated 19.02.2016 & 05.01.2017 relating to assessment years 2012-13, 2011-12 & 2013-14 against respective orders passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals filed by Revenue relating to same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. The issue arising in the bunch of appeal is identical. However, in order to adjudicate the issue, we make reference to the facts and issues in ITA No.1164/PUN/2016, relating to assessment year 2012-13.

3. The Revenue in ITA No.1164/PUN/2016, relating to assessment year 2012-13 has raised the following grounds of appeal:-

1. *On the facts and in the circumstances of the case, the learned CIT(A) erred in deleting the addition of Rs.12,53,48,590/-, made by the Assessing Officer, on account of disallowance of claim u/s. 80IB(10) of the I.T. Act, 1961.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in failing to appreciate that first approval in respect of the housing project had been given by the Municipal Corporation on 17.3.2004 and the assessee should have completed the project by 31.3.2008, which it failed to do and therefore, it was not eligible for the deduction u/s. 80IB(10) of the Act.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in failing to appreciate that the PMC had categorically mentioned the subsequent plan approved on 2.8.2006 as "Revised Plan". This fact is clearly evident from the certificate itself which refer the proposal as "Revised" in the commencement certificate dtd. 2.8.2006.*
4. *The order of the Ld. CIT(A) be vacated on this issue and that of AO be restored.*

4. The issue arising in three appeals filed by Revenue is against order of CIT(A) in allowing the claim of deduction under section 80IB(10) of the Act. The Revenue is aggrieved by the order of CIT(A) in not appreciating that housing project which was approved on 17.03.2004 should have been completed by 31.03.2008, hence it failed the conditions of section 80IB(10) of the Act.

5. Briefly, in the facts of the case, the assessee was engaged in the business of builders and developers. For the year under consideration, the assessee had furnished return of income declaring Nil income after claiming deduction under section 80IB(10) of the Act. The case of assessee was taken up for scrutiny. The Assessing Officer noted that the assessee was engaged in development work of housing project under the name and style of M/s. Ravi Park. It had two phases in the project and the revenue was also recognized phase-wise. The phase-I consisted of four buildings with 154 flats / units, whereas phase-II consisted of three buildings with 180 flats / units. The assessee pointed out that revenue for phase-I was claimed upto assessment year 2010-11 and the revenue for phase-II was booked upto assessment year 2012-13. The Assessing Officer noted that initial completion certificate for the entire project was received on 02.08.2006, whereas final completion certificate for phase-I and phase-II were received on 10.03.2010 and 30.03.2012. The assessee clarified that during assessment year 2010-11, completion certificate was received for 145 flats of phase-I and revenue was booked for 134 flats only. The phase-II project was still in work-in-progress stage during assessment year 2010-11. The case of assessee was that it had started project on 02.08.2006, which was completed by 10.03.2010, hence within period allowed under section 80IB(10)(a) of the Act. In respect of second project, initial commencement certificate was received on 30.03.2007 and was

completed on 30.03.2012, for which completion certificate was received, hence was within time frame allowed under section 80IB(10) of the Act. In order to verify the genuineness of aforesaid claim made by assessee, the Assessing Officer issued Summons under section 131 of the Act to the Government Registered Valuer (Category-I), Pune for inspection of project and to submit the report on the provisions specified under section 80IB(10) of the Act. The Valuer submitted his report and pointed out that first layout plan was approved by PMC on 17.03.2004 in the name of Ravi Promoters. They commenced project with construction of row houses on part of the plot i.e. Part A; however on 03.02.2006 they entered into an agreement with the assessee for Part B. After the agreement, the assessee got sanction for combined plot Part A and Part B vide commencement certificate dated 02.08.2006. He further reported that there was no individual commencement certificate for Part B. The Assessing Officer in view of the said report observed that initial sanction for the project from the Competent Authority was obtained on 17.03.2004 and commencement certificate dated 03.02.2006 was revised commencement certificate, hence the project had to be completed by 31.03.2008 which was not the case in the hands of assessee. The Assessing Officer further noted various other aspects and show caused the assessee as to why deduction claimed under section 80IB(10) of the Act should not be denied to the assessee. In reply, the assessee pointed out that Pune Bench of Tribunal in assessee's own case had decided the issue in favour of assessee and held that the approval of project of assessee for the purpose of clause (a) of section 80IB(10) of the Act had to be reckoned from 02.08.2006 (phase-I) i.e. date on which the impugned project of assessee was first approved by PMC. Hence, stipulated date for completion of construction as per sub-clause (iii) of clause (a) of section 80IB(10) of the Act and held the assessee to have complied the requirement of

section 80IB(10)(a) of the Act. The assessee also placed reliance on the decision of Hon'ble Bombay High Court in CIT Vs. Vandana Properties reported in 353 ITR 36 (Bom). The Assessing Officer however, distinguished the facts before the Hon'ble Bombay High Court and also did not accept the proposition laid down by the Tribunal in assessee's own case and reiterated that the project 'Ravi Park' shall be deemed to have been approved on the date on which first approval of building plan was granted by local authority i.e. on 17.03.2004 and since the assessee has failed to complete construction of entire project on or before 31.03.2008 as per provisions of law, the assessee was not entitled to the claim of deduction under section 80IB(10) of the Act.

6. The CIT(A) took note of the factual aspects of case i.e. details of project, date of its commencement and completion of phase-I and phase-II individually as propounded by the assessee before CIT(A) and also the findings of Tribunal and referring to the same under para 3.4 at pages 14 to 17 held that since the issue has been decided in favour of assessee by the jurisdictional Tribunal on assessee's own case, then the assessee was entitled to claim deduction under section 80IB(10) of the Act. The CIT(A) vide para 4 also decided the issue raised by assessee against Assessing Officer passing the order controverting settled legal position and without following rules of judicial discipline and observed that the assessee never raised the fact of allowing relief by the Tribunal before Assessing Officer and dismissed the plea of assessee.

7. The Revenue is in appeal against order of CIT(A).

8. The learned Authorized Representative for the assessee at the outset pointed out that the issue raised in present appeal is covered in favour of assessee. He took us through the order of Tribunal relating to assessment

year 2010-11, wherein the Tribunal had decided the issue of commencement of project by the assessee and it was categorically held that the assessee firm was incorporated on 31.01.2006 and it could not be said that assessee firm had obtained first sanction of project on 17.03.2004. He further pointed out that the Tribunal has accepted the plea of assessee that in earlier project, there was plan to construct row houses but after entering into agreement with Ravi Promoters on 03.02.2006, the assessee submitted plan for construction of flats in phase-I and phase-II of said project independently on different dates. The Tribunal then held the assessee to be entitled to the claim of deduction under section 80IB(10) of the Act on the ground that it had commenced the project for phase-I on 02.08.2006, for which completion certificate was received on 10.03.2010. The learned Authorized Representative for the assessee further pointed out that it was undisputed that phase-II was separate project which was commenced on 30.03.2007 and for which completion certificate was received on 30.03.2012, hence, fulfilled the conditions of section 80IB(10) of the Act. He again referred to the order of Assessing Officer, who had denied the claim of deduction to the assessee on the ground that the project had started on 17.03.2004. He also pointed out that CIT(A) was wrong in stating that the order of Tribunal was not placed before Assessing Officer. On the other hand, the findings of Tribunal relating to assessment year 2010-11 are reproduced by the Assessing Officer at pages 8 and 9 of assessment order and he has not followed the judicial discipline and distinguished the position which has been settled. In phase-II which was commenced on 30.03.2007, the assessee claimed to have constructed flats in buildings E to G.

9. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the order of Assessing Officer.

10. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is against claim of deduction under section 80IB(10) of the Act. It may be pointed out that this is not the first year of claim of deduction by the assessee under section 80IB(10) of the Act. The assessee had claimed aforesaid deduction in assessment year 2010-11 which was denied to the assessee on the ground that the project was started by assessee as per sanctioned plan dated 17.03.2004. Consequently, the assessee had to complete construction of said project by 31.03.2008, whereas the assessee completed project vide completion certificate dated 10.03.2010 and hence, the assessee was not entitled to deduction claimed under section 80IB(10) of the Act for violation of conditions in clause (a) of said section. The said issue travelled to the Tribunal and in ITA No.940/PN/2014 relating to assessment year 2010-11 vide order dated 22.01.2015, the Tribunal took note of factual aspects of the case, wherein it was noted that partnership firm was formed on 31.01.2006. Further, on 03.02.2006 partnership firm had entered into an agreement with Tupe family and Ravi Promoters for acquiring the land admeasuring 18,500 sq.mtrs. The project of assessee was executed on the said plot of land. Earlier, Ravi Promoters had entered into an agreement for development of said land with Tupe family and had obtained commencement certificate on 17.03.2004 comprising of construction of four buildings A to D consisting of 121 row houses and 48 flats. However, Ravi Promoters could construct only 40 row houses in 4112 sq.mtrs. of plot area. Subsequently, balance land was acquired by assessee and it changed the layout of the project. The Tribunal held that in fact, new project was undertaken by the assessee as it did not contain any row houses. The assessee constructed seven buildings comprising of 334 flats and no row houses. The changed layout plan in the new building plan was first approved by PMC on 02.08.2006

for phase-I. The Tribunal thus, decided whether the project constructed by assessee could be said to be part and parcel of project which was earlier conceived and commenced by Ravi Promoters vide commencement certificate dated 17.03.2004. The finding of Tribunal vide para 13 after noting the factual aspects of the case is that there was no merit in the objection of Assessing Officer that the assessee had not fulfilled the conditions prescribed in clause (a) of section 80IB(10) of the Act. The Tribunal held that the approval for project for the purpose of clause (a) of section 80IB(10) of the Act had to be reckoned from 02.08.2006 i.e. the date on which said project was first approved by PMC. Consequently, stipulated date for completion of construction had to be governed by sub-clause (iii) of clause (a) of section 80IB(10) of the Act and it was held that the assessee had complied with the said requirement. The findings of Tribunal are reproduced by the Assessing Officer at page 8 of assessment order and by CIT(A) at pages 15 to 17 of appellate order. For the sake of brevity, the same are not being reproduced. In view of the issue being settled by the Tribunal, wherein clear findings were given as to the date of commencement of project from 02.08.2006, there is no merit in the order of Assessing Officer in overlooking the decision of Tribunal and coming to a finding that the project was started on 17.03.2004 and had to be completed before 31.03.2008. First, we hold that the Assessing Officer has failed in his duty in not following the judicial discipline, wherein the decision of Tribunal in assessee's own case is binding on all the authorities below to Tribunal. The Assessing Officer was completely aware of the decision of Tribunal as he has reproduced the findings of Tribunal in para 8 but he does not apply the said proposition and also distinguished the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Vandana Properties (supra), whereas both the decisions i.e. of Pune Bench of Tribunal and the Hon'ble Bombay High Court in CIT Vs.

Vandana Properties (supra) are squarely applicable to the facts of the present case before us. We also find fault with the order of CIT(A), wherein in para 4 she gives a finding that from the assessment order passed by the Assessing Officer it transpires that the assessee never raised the fact of allowing relief by the Tribunal, before the Assessing Officer. This was in reply to the grounds of appeal raised by assessee, wherein it was agitated that the order of Assessing Officer being passed without following rules of judicial discipline, needs to be set aside. The CIT(A) has also failed to take note of the factual position in this regard, wherein the assessee brought to the notice of Assessing Officer that the issue stands settled by the order of Tribunal in earlier year and the Assessing Officer also notes the finding of Tribunal and reproduced the same in para 8. Such judicial indiscipline by both the authorities is not appreciated and they are advised not to disturb the settled legal position especially where the issue has been decided on the facts of the case itself by Tribunal and the issue also stands covered by the Hon'ble Bombay High Court.

11. Now, coming to the facts of the case, wherein the first aspect is project commencement certificate of phase-I dated 02.08.2006 and completion certificate being issued on 10.03.2010; it is undisputed that there is phase-II to the said project which commenced vide certificate No.CC/4830/06, dated 30.03.2007 and the completion certificate was issued for the said project on 30.03.2012. The assessee having fulfilled the conditions laid down in clause (a) of section 80IB(10) of the Act, is entitled to the claim of deduction under section 80IB(10) of the Act. The sole basis on which the deduction was denied to the assessee by Assessing Officer was on the ground that the project had started in 2004 and had to be completed by 31.03.2008. The said findings of Assessing Officer have already been overturned by the Tribunal in its appeal relating to assessment year 2010-11 and the same do not stand. Accordingly,

we hold that the assessee having fulfilled the conditions laid down in section 80IB(10)(a) of the Act, is entitled to the benefit of deduction under section 80IB(10) of the Act and the grounds of appeal raised by the Revenue are thus, dismissed.

12. The facts and issues in ITA Nos.1330/PUN/2017 & 1331/PUN/2017 are identical to the facts and issues in ITA No.1164/PUN/2016 and our decision in ITA No.1164/PUN/2016 shall apply *mutatis mutandis* to ITA Nos.1330/PUN/2017 & 1331/PUN/2017.

13. In the result, all the appeals of Revenue are dismissed.

Order pronounced on this 28th day of September, 2018.

Sd/-
(ANIL CHATURVEDI)
 लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
 न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 28th September, 2018.
 GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A), Pune-5, Pune;
4. The Pr.CIT, Pune-4, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', 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