

आयकर अपीलीय 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.1437 to 1439/PUN/2015
निर्धारण वर्ष / Assessment Year : 2006-07, 2011-12 & 2012-13**

Dy.CIT, Circle-1(2),
Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

D.S. Kulkarni Developers Pvt. Ltd.,
DSK House, 1187/60,
J.M. Road, Shivajingar,
Pune – 411005
PAN : AAACD6413H

.....प्रत्यर्थी / Respondent

Appellant by : Shri Sanjeev Ghei
Respondent by : None

सुनवाई की तारीख / Date of Hearing : 18.09.2018	घोषणा की तारीख / Date of Pronouncement : 26.09.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM

There are 3 appeals filed by the Revenue under consideration involving A.Yrs. 2006-07, 2011-12 and 2012-13. They are filed against the separate orders of CIT(A)-1, Pune, commonly dated 24-08-2015. Revenue raised identical grounds in these appeals. For the sake of convenience, all these appeals were heard together and are being decided in this composite order.

2. There is none to represent the assessee despite service of notice. Acknowledgement is placed on record. However, on going through the facts and the issue raised in these appeals and keeping in view the availability of assistance of Ld. DR for the Revenue, we proceed to adjudicate the appeal in the succeeding paragraphs.

We shall take up appeal of the Revenue for A.Y. 2006-07 as a standard one.

ITA Nos. 1437/PUN/2015
A.Y. 2006-07

3. Briefly stated relevant facts of the assessee include that the assessee is a company and is engaged in the business of Builder and Developer. Assessee filed the return of income declaring total income of Rs.4,91,92,810/-. The scrutiny assessment has been completed determining the total income at Rs.7,43,15,900/-. However, on finding that the assessee claimed deduction of Rs.4,66,88,386/- u/s.80IB(10) of the Act in respect of project "DSK Sundarban" at Hadapsar, Pune. The AO allowed the deduction eventhough the assessee did not produce the completion certificate on the assumption that the project will be completed within 4 years from the date of commencement. At the end of the assessment proceedings u/s.143(3) of the Act, the AO made addition of Rs.4,66,88,386/-.

4. the First Appellate proceedings, the CIT(A) relying on the order of Tribunal in the assessee's own case vide ITA Nos. 723 to 725/PUN/2013, for the A.Yrs. 2007-08 to 2009-10 allowed the deduction claimed by the assessee u/s.80IB(10) of the Act.

5. Aggrieved with the order of CIT(A), the Revenue is in appeal before the Tribunal with the following grounds :

“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) grossly erred in deleting the disallowance made by the Assessing Officer of the assessee’s claim of deduction of Rs.4,66,83,386/- in respect of housing project “DSK Sundarban” instead of confirming the said disallowance.

3. The Ld.CIT(A) grossly erred in interpreting section 80IB(10) in the context of applicability of clause (d) in a manner neither contemplated nor provided for under the Act.

4. The Ld.CIT(A) grossly erred in holding the assessee as eligible for deduction u/s.80IB(10) when the project had been approved as a residential and commercial project & not as a Housing Project and the built up area of commercial units exceeded 2000 sq.ft. violating the provisions of section 80IB(10)(d) of the Act.

5. The Ld.CIT(A) erred in holding that the amenity space I and II of the project DSK Sundarban were independent project and not part of the residential project constructed by the assessee company.

6. For these and such other grounds as may be urged at the time of hearing, the order of the Ld.CIT(A) may be vacated and that of the assessing officer be restored.

7. The appellant craves to add, amend, alter or delete any of the grounds of appeal during the course of appellate proceedings before the Hon’ble Tribunal.”

6. Before us, Ld. DR for the Revenue submitted that the issue raised in the appeal relates to allowability of deduction u/s.80IB(10) of the Act. The AO denied the benefit of deduction holding that the assessee exceeded the construction of commercial space, the limits specified in the Act. Non filing of completion certificate was also a reason for denial of deduction. Ld. DR brought our attention to the order of CIT(A) and submitted that the appeal is allowed on this issue of deduction u/s.80IB(10) of the Act. Contents of Para No.6 of the order of CIT(A) constitutes the operational para. Otherwise Para Nos. 4 to 6 deals with this issue. CIT(A) narrated the relevant facts in the said paragraphs. CIT(A) considered the written submissions of the assessee and granted

relief relying on the order of the Tribunal in assessee's own case for the A.Yrs. 2007-08 to 2009-10. However, Ld. DR fairly mentioned that the Tribunal's decision is applicable on merits to the facts of the present case.

7. We heard the Ld. DR for the Revenue and perused the orders of the AO/CIT(A) and the material available on record. We find the solitary issue raised by the Revenue on the allowability of deduction u/s.80IB(10) of the Act. It is undisputed fact that the AO originally completed the assessment u/s.143(3) of the Act and the present assessment is made u/s.148 of the Act holding that the assessee is not entitled to claim deduction u/s.80IB(10) of the Act. However, vide the contents of Para No.5 of the order of CIT(A), on similar facts, the assessee was given relief by the Tribunal. In Para No.6 of the order of CIT(A), the CIT(A) relied on the order of Tribunal in the assessee's own case for the A.Yrs. 2007-08 to 2009-10. We have seized up with the similar issue in the A.Yrs. 2006-07, 2011-12 and 2012-13. Ld. DR fairly submitted that there is no difference on facts. We find it is the decision of the Tribunal that the AO is not justified in rejecting the claim of deduction u/s.80IB(10) of the Act. We therefore proceed to extract the relevant paragraphs from the order of CIT(A).

"4. Grounds No. 2 to 5 :

Grounds No. 2 to 5 pertain to the appellant's grievance in respect of disallowance of deduction u/s.80IB(10) of the I.T. Act, 1961 amounting to Rs.4,66,88,386/- in respect of project called "DSK Sundarban". The disallowance was made by the Assessing Officer in the assessment order dated 11-3-2014 on the basis of findings made in A.Y. 2007-08.

5.
.....

6. *I have carefully considered the facts of the case as well as reply of the appellant. It is seen that the Hon. ITAT in its order dated 31/7/2014 in appellant's own case in ITA Nos. 723 to 725/PN/2013 for AYrs 2007-*

08 to 2009-10 has allowed deduction u/s.80IB(10) of the I.T. Act, 1961 in respect of DSK Sundarban for A.Y. 2007-08 to 2009-10 respectively. The relevant portion of the Tribunal's order is reproduced as under :

2.5.5 In view of the above discussion, the facts of Shroff Developers (supra) are identical to the facts of the assessee's case and accordingly, amenity space 1 and 2 should be considered as separate and independent project. Regarding the objection of the Assessing Officer in the website of assessee company, the assessee itself has shown shops available in DSK Sundarban project. The issue is not relevant to decide whether the residential and amenity space are separate projects or one and the same. So long as the building plans are independently sanctioned, two projects are separately and accordingly, disallowance was not rightly rejected on this account. Accordingly, the Assessing Officer was not justified in rejecting claim of the assessee under the provisions of section 80IB(10) of the Act in respect of DSK Sundarban. The Assessing Officer is directed accordingly. Similar issue arose with regard to DSK Sundarban in assessee's appeals in ITA Nos.724 & 725/PN/2013 for A.Ys.2008-09 & 2009-10 respectively. Facts being similar, so following the same reasoning, the Assessing Officer is directed to allow the assessee's claim of deduction u/s.80IB(10) of the Act with regard to Project DSK Sundarban."

Since the facts being same, following the Tribunal's order as above, the appellant's claim of deduction u/s.80IB(10) of the I.T. Act, 1961 amounting to Rs.4,66,88,386/- is allowed. Thus, ground Nos. 2 to 5 are allowed."

Thus, we find the Ld. DR has not made out a case that the said order of the Tribunal is inapplicable to the facts of the present case. Therefore, we are of the opinion that the order of CIT(A) is fair and reasonable and it does not call for any interference. The grounds raised by the Revenue are dismissed.

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

9. Since the facts, issues, decisions of AO/CIT(A) are same in the remaining A.Yrs. 2011-12 and 2012-13 as that of A.Y. 2006-07, our decision of allowing deduction u/s.80IB(10) to the assessee relying on the order of Tribunal for the A.Yrs. 2007-08 to 2009-10 will apply to the A.Yrs. 2011-12 and 2012-13 as well. Accordingly, the grounds raised by the Revenue in these appeals are also dismissed.

10. To sum up, all the three appeals of the Revenue are dismissed.

Order pronounced in the open court on 26th September, 2018.

Sd/-

Sd/-

(विकास अवस्थी /VIKAS AWASTHY) (डी. करुणाकरा राव/D. KARUNAKARA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 26th September, 2018.
Satisb

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-1, Pune
4. The Pr.CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune