

आयकर अपीलीय अधिकरण।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**SURAT- BENCH 'SURAT**  
**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER**  
**AND**  
**SHRI AMARJIT SINGH, ACCOUNTANTO MEMBER**

**आयकर अपील सं./ ITA.No.282/Ahd/2017**

**निर्धारण वर्ष/ Asstt. Year: 2012-13**

ITO, Ward-2(3)(4) Surat.	Vs.	Smt.Sarla Rajkumar Varma A/26, Bhagyalaxmi Society Piplod, Surat.
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<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
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Revenue by :	Smt.Smita Nair, Sr.DR
Assessee by :	Ms.Himali Mistry, CA

सुनवाई की तारीख/Date of Hearing : 13/11/2018

घोषणा की तारीख /Date of Pronouncement: 13/11/2018

**आदेश/O R D E R**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Revenue is in appeal before the Tribunal against order of Id.CIT(A)-2, Surat dated 24.11.2016 for the Asstt.Year 2012-13.

2. The grounds of appeal taken by the Revenue are not in consonance with the Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963 - they are descriptive and argumentative in nature. In brief, grievance of the Revenue is that the Id.CIT(A) has erred in allowing deduction under section 80IB of the Act at Rs.93,46,673/- and also erred in deleting addition of Rs.11,000/- which was added by the AO with the aid of section 68 of the Income Tax Act, 1961.

3. The Id.counsel for the assessee at the very outset submitted that as far as issue regarding allowance of deduction under section 80IB(10) is concerned,

the Id.CIT(A) has placed her reliance on the order of her predecessor in the Asstt.Year 2010-11. The appeal of the Revenue in the Asstt.Year 2010-11 bearing ITA No.2269/Ahd/2014 has been dismissed by the Tribunal vide order dated 12.4.2017. She placed on record copy of the Tribunal's order. The Id.DR was unable to controvert this aspect.

4. With the assistance of the Id.representatives, we have gone through the record carefully. The finding of the Id.CIT(A) on this issue is worth to note, which reads as under:

*“DECISION*

*6.1.1. I have considered the assessment order as well as the submissions of the appellant. The Grounds of appeal- Ground No. 1 pertains to rejecting the claim of deduction u/s 80IB(10) amounting to Rs. 93,46,673/- and making addition of Rs. 11,000/-. During the appellate proceedings, appellant has submitted that the AO has made disallowance of deduction u/s. 80IB(10) on appreciation of wrong facts. As per her, the date of permission by SUDA as on 05.02.1997 taken by AO belongs to the earlier owner of land, not the appellant.*

*It is further submitted that even for permission for use of land for non- agricultural purposes was granted by Jilla Panchayat Kacheri Mehsul Shakha Surat as on 12.07.2006, therefore, no construction could be made prior to that date. As per appellant, the permission for the construction to develop the housing project, on which deduction u/s. 80IB(10) is claimed, was granted as on 23.02.2007 which was revised on 17.09.2009 and the project was completed on 31.03.2010 as per completion certificate given by SMC, Surat.*

*6.1.2. On the perusal of the details it is observed that this issue has already been decided by Commissioner of Income-tax (Appeals)-I, Surat, in the appellants own case, by his order dt.26-05-2014 has dealt with the above issue and allowed the appeal for A.Y.2010-11. Further, for A.Y.2011-12, Commissioner of Income-tax (Appeals)-IV, Surat has allowed the appeal vide his order dated 05/07/2016. The Commissioner of Income-tax (Appeals)-I, Surat in his order dt.26-05-2014 held as under:*

*“I have considered the facts of the case and submissions of the appellant. It is clear from the assessment order and submissions of appellant that the date of permission from SUDA as on 05.02.1997 has been taken by AO from purchase deed of land filed by appellant during assessment proceedings. But, it was clarified by appellant during assessment proceedings to AO as well as during appellate proceedings that said date of permission was granted to earlier owner of the land,*

*not the appellant. It has been clearly explained that Late Shri Omprakash Gulabchand Varma, father of the appellant had purchased the land by purchased document dated 19.01.2007 from Shri Hemant Ishvarlal Desai and as per description given in the document, the land was originally of HUF of Jayantilal Jashwantisinh and Shantaben Bhagwansinh with number of coparceners and after partitions and transfer, ultimately Hemant Ishvarlal Desai purchased land which was sold to the appellant's father on whose death the project came to the appellant. It was further clarified that the SUDA had given permission as on 05.02.1997 to its erstwhile owners for making plots and thereafter construction to plinth and out of those plots, two plots were purchased by Hemant I. Desai as on 27.03.2000 which was subsequently purchased by father of appellant and which, in turn, came in possession of appellant. From these facts, it is clear that the date of 05.02.1997 has wrongly been taken by AO for the purpose of computing deduction u/s. 80IB(10) in the case of housing project completed by appellant. From the facts, it is also clear that the permission to develop housing project as on 23.02.2007 was obtained in the name of Hemant Ishvarbhai Desai because the application was made by the appellant even when land was under negotiation. However, this was revised by permission dated 17.09.2009 and as per revised permission, the housing project was completed as on 31.03.2010. In view of these facts, it is clear that the AO should have taken the date of permission by Municipal Authority as on 23.02.2007 and date of completion as on 31.03.2010 for computing the deduction u/s. 80IB(10) of the Act. As per sub-clause (ii) of clause (a) of section 80IB(10), in a case where housing project has been or is approved by local authority on or after 01.04.2004 and completed within 4 years from the end of financial year in which the housing project is approved by local authority, deduction u/s. 80IB(10) is allowable on the profit earned by assessee on such project. In the case of appellant, project was commenced on 23.02.2007 and completed within 4 years from the end of financial year of commencement. Thus, the condition of completion of project within prescribed time is fulfilled by assessee in her case. In case of other conditions for allowing deduction, AO has not raised any objections. The case laws quoted by appellant in her submissions also support her case. In view of these facts, I hold that the AO has wrongly disallowed the deduction. I, therefore, allow the deduction of Rs. 90,41,235/- u/s. 80IB(1) of the Act to appellant. The grounds taken by appellant are allowed. ”*

*The facts and circumstances being the same, I find no reason to deviate from the findings of my predecessor and therefore the appellant is held eligible for claiming deductions u/s 80IB(10) of the Act.”*

5. A perusal of the above would indicate that the Id.CIT(A) has recorded a finding that there is no disparity on facts between the assessment year 2010-11 and upto this assessment year. The Id.CIT(A) has followed order passed in the Asstt.Year 2010-11. The Tribunal has upheld order of the Id.CIT(A) in the Asstt.Year 2010-11. The Tribunal has concurred with the Id.CIT(A) that Surat

Urban Development Authority had given permission on 5.2.1997 to erstwhile owners of these plots, and thereafter construction upto plinth level on these plots were made. These were purchased by Shri Hemant Desai on 27.3.2000 which were subsequently purchased by father of the assessee, and ultimately came into the possession of the assessee. The Tribunal also observed that permission to develop housing project was obtained on 23.2.2007 which was revised on 17.9.2009 and as per permission, housing project was completed on 31.3.2010. Thus, the Tribunal concurred with the Id.CIT(A) that project was completed well within the stipulated time, and the assessee is entitled for deduction under section 80IB(10). We respectfully following the order of the ITAT (supra) in the Asstt.Year 2010-11, do not find any error in the order of the Id.CIT(A) on this issue.

6. As far as pleading of the Revenue contained in ground no.1 that addition of Rs.11,000/- made by the AO with the aid of section 68 has been deleted is concerned, it is factually incorrect. A perusal of the CIT(A)'s order would indicate that ground with regard to addition of Rs.11,000/- was dismissed by the Id.CIT(A). Therefore, there cannot be any grievance to the Revenue on this aspect. It has erroneously been raised. We do not find any reasons to interfere in the order of the Id.CIT(A). Thus, appeal of the Revenue is dismissed.

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

**Order pronounced in the Court on 13<sup>th</sup> November, 2018 at Surat.**

**Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

**Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**

Surat: Dated 13/11/2018