

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
**IN THE INCOME TAX APPELLATE TRIBUNAL
 SURAT BENCH, SURAT**

श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
 AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.123/Ahd/2016/SRT	निर्धारण वर्ष/A.Y.:2012-13
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M/s. Shyam Corporation, 39 Vrajbhumi Township, Moje Simdhagam, Chorayasi, Surat - 395 010. [PAN:ABIFS 0262 M]	Vs.	Deputy Commissioner of Income-Tax, Circle - 2(3), Surat
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri P. M. Jagasheth, CA
राजस्व की ओर से /Revenue by	Shri R.P.Rastogi - Sr.DR

सुनवाई की तारीख/ Date of hearing:	31.07.2018
उद्घोषणा की तारीख/Pronouncement on	31.08.2018

आदेश /O R D E R

PER O. P. MEENA, ACCOUTANT MEMBER:

1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-1; Surat (in short “the CIT (A)”) dated 05.10.2015 for the assessment year 2012-13. Which in turn has arisen from the order passed by the Deputy Commissioner of Income-Tax, Circle-2(3), Surat (in short “the AO”)

dated 30.03.2015 under section 143 (3) of Income Tax Act, 1961 (in short 'the Act').

2. The sole grounds of appeal reads as under: The Ld. CIT (A) has erred in law and on facts of the case in confirming the action of the Assessing Officer thereby denying the deduction under section 80IB(10) of Rs.1,32,45,096/- without appreciating the provisions of said section in proper perspective.

3. Succinct facts are that the assessee is engaged in civil construction as organizer and developer. Return of income was filed on 10.09.2012 declaring total income of Rs. NIL after deducting deduction of Rs. 1,32,45,096 u/s. 80IB(10) of the Act. The AO observed that provision of section 80IB (10) requires that housing project should be approved on or before 31.03.2008 whereas in the case of assessee the housing project has been approved on 29.08.2006 in the name of Shri Ashokbhai Vallabhai Dobaria, the seller of land and the assessee was not in any way connected with the project at that time. As per clause-9 of Approval, the said approval was valid up to 12 months only, if not renewed the approval would lapse automatically. As per the AO, the assessee did not prove by any evidence that the original

approval was revised before it was lapsed. The AO further observed that the revised application for development permission was sought by the assessee on 18.01.2010 and the same was approved by SMC on 03.07.2010 in the name of Shri Bhailalbai Nanubhai Sheladiya, administrator of Shyam Corporation. In addition, the second development permission has no reference of first approval taken. Beside this, Business Use Certificate (BUC) was issued by SMC also made reference to date of application as on 18.01.2010 for which permission was granted on 03.07.2010. On the basis of above stated reasons, the AO has rejected the claim u/s. 80IB (10) of the Act of Rs.1,32,45,096/-.

4. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). The CIT (A) observed that the original plan was approved by SMC on 29.08.2006 in the name of Shri Ashokbhai Vallabhai Dobaria, the landowner that was valid up to 28.08.2007. The said land was purchased by Shri Bhailal Nanubhai Sheladiya, one of the partner of the firm on 11.07.2007. Thereafter, he applied for permission for development on same land for construction of low rise hosing building on 18.01.2010 and received approval on 03.07.2010 in the name of Shri Bhailal Nanubhai Sheladiya. BUC

for project was dtd. 26.03.2012 have also mentioned the date of application as 18.01.2010 and date of granting development permission on 03.07.2010. Obviously, new permission has been sought for different project and by different owner. The original plan approval was got lapsed on 28.08.2007, so new development plan (claimed to be revised plan) altogether different and fresh approval having no connection with earlier development plan except for the same piece of land. Hence, the CIT (A) held that the project for which deduction u/s. 80IB (10) has been claimed is approved on 03.07.2010, hence, the project is not eligible for deduction u/s. 80IB (10) of the Act. The CIT (A) also observed that CIT (A) -II, Ahmedabad vide order No. CAS (A)-II/CC-4/32/20/13-14 dtd. 19.06.2014 for the assessment year 2010-11 in the case of K.G. Developers has denied deduction where the Appellant was having similar issue; hence, he has also followed the same.

5. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned Authorized Representative (the Id. A.R.) took us through the agreement to sale dated 11.07.2006, placed at Paper Book Page No. 13 to 25 and English translation at PB-26-27, by which the assessee has taken the possession of NA land for

construction of housing project. The said satakhat has been duly registered with Sub Registrar Surat on 11.07.2006. The Id. A.R. referred Page No. 28 to 33 of Paper Book also, being copy of permission of development of plan by SUDA dtd. 29.08.2006 in the name of Shri Ashokbhai Vallabhai Dobaria, the original owner of the land. The Id. A.R. submitted that as per clause 9 of this development permission, the assessee is required to start construction within 12 months from the date of permission otherwise this approval would automatically lapse if not renewed. The Id. A.R. submitted that original development permission was granted in the name of Shri Ashokbhai Vallabhbai Dobaria, as the name in land record was original owner. Thereafter, the assessee has started the construction and an intimation of commencement of construction work was given on 25.01.2007 to Local authority i.e. before the expiry of original development plan on 28.08.2007. The assessee has entered in to a Dastavej on 26.03.2007. The Id. A.R. referred clause 3.5 of General Development Control Regulation, (GDCR) of SUDA, as per which this developer permission shall mean to have lapsed if construction of the building is not commenced within the stipulated period in para

6.5.2. of GDCR. Since the assessee has commenced the construction from 20.01.2007 before expiry of period of permission on 28.08.2007, therefore, the original plan was effective and permission was not lapsed. The assessee has moved an application on 19.01.2010 for approval of revised plan, which was necessitated as the assessee, has sold out some portion of land (2345 sq. meter) to another person, stating that it is revised plan and not original plan. The original plan was approved for 23006.58 sq. meter of construction of low-rise building. As the firm has sold out 2345 sq. meter of land, if the firm would not have sold then the original plan does not get to require the approval of revised plan as it was originally approved on 29.08.2006. The Id. A.R. also took us through the lay out plan placed at Page No. 37 of Paper Book and submitted that same very layout plan was got renewed on 03.07.2010. The revised plan was for the construction of low-rise building and approval of construction was for 16690.95 sq. meter. Therefore, it was contended that the original permission for construction dtd. 29.08.2006 was already in force on the date of application for revised plan. Further, there is no different in layout of development plan approved on 29.08.2006 and revised plan

approved on 03.07.2010 which was in continuation with original plan approved on 29.08.2006. Therefore, it was contended that the project was approved by Local Authority before 31.03.2008 i.e. on 29.08.2006. The size of plan is minimum of 1 acres on which project was to be constructed. The ld. A.R. submitted that contention of the Revenue that original permission dtd. 29.08.2006 was taken in the name of Shri Ashokbhai Vallabhai Dobaria and second permission dtd. 03.07.2010 is in the name of Shri Bhaillabhai Nanubhai Sheladiya, hence, first approval has no links with second approval is incorrect as the assessee is eligible in law to obtain revised approval as per Explanation to section 80IB (10) of the Act and original approval would be deemed to be approval for the purpose of section 80IB (10) of the Act. Further, relying on the decision in the case of CIT vs. Radhe Developers [2012] 341 ITR 403 (Guj) wherein it was held that the assessee was entitled to benefit u/s. 80IB (10) of the Act even where the title of the land was not passed on to the assessee and in some cases, the development permission may also be have been obtained in the name of original land owners. It was further submitted that that the layout plan and revised layout plan are same for low-rise

house, hence, second permission dtd. 03.07.2010 was in continuation of original approval dtd. 29.08.2006. The reliance by the CIT (A) in the case of K. G. Developers (supra) not applicable as in that case original approval was taken for high-rise houses and second plan was altogether different, whereas in the case of the assessee, the original approval, layout, and revised layout plan are same, hence, the original approval was in force.

6. On the other hand, the learned Departmental Representative relying on the order of authorities below submitted that original approval dtd. 29.08.2006 was in the name of Shri Ashokbhai Vallabhai Dobaria, and second approval dtd. 03.07.2010 was in the name of Shri Bhallabhai Nanubhai Sheladiya, one of the partners of the assessee firm. Therefore, revised approval is fresh, hence, cannot be treated as in continuation of original approval. Further BUC dtd. 26.03.2012 refers date of application as 18.01.2010 and not of original approval dtd. 29.08.2006. Hence, development plan was not for approved before 31.03.2008. Therefore, CIT (A) has rightly confirmed the action of the AO.

7. We have heard the rival submissions and perused the relevant material on record. We find that the assessee has entered

in to an agreement to sale dated 11.07.2006, with owners of land and has obtained possession of land for construction and development. This agreement to sale was registered with Sub Registrar, Surat. In the most common mode of development of real estate by the developers, the owners of land do not desire to develop the land and they sell the land to a developer. It is the obligation of the developer to develop the land, and if necessary, to get agricultural land converted into non-agricultural land by the change of user, appoint the architects to prepare the building plans, get them approved with the local authority and to construct the houses in the form of tenements and flats. The developer would carry out the construction on his own, namely, carry out all necessary statutory formalities for construction, buy material for construction, employ labour or an agency, which would supply labourers and thereupon complete the construction. The developer would then sell the houses/ flats to the prospective buyers. The developer would buy land and get it transferred in his name even before the plans are placed. In the present case, the assessee has entered in to agreement to sale of land situated at Mojegam, Taluka Chorayasi district Surat. The development of

plan of construction has to be approved by SUDA. The by-laws of SUDA clearly says that anyone, who develops the land on his own account or for the benefit of any other person or as a joint trustee, guardian, manager, etc., is to be treated as an owner. The permission for development could be granted to whoever has applied for the permission not necessarily only the owner. In the present case, the assessee has applied for development permission and received approval on 29.08.2006 from SUDA Surat, for developing of low-rise housing project as per layout plan submitted. However, the permission was granted in the name of Shri Ashokbhai Vallabhai Dobaria, the original owner of land, as the title of ownership of land was not passed on to the assessee by that time, hence, this permission was given as per land revenue records as name of original owner was appearing whereas the possession of land in question was already taken over by the assessee as per agreement to sale dtd. 11.07.2006. As per clause 9 of said development permission, it was effective for 12 months from date of permission and further approval of construction work should be taken by taking renewal permission from time to time as per rules. Thus, this permission, so taken was effective as per

by laws for one year and would lapse if no construction Works started. We observe that the assessee has started construction work on or before 25.01.2007 as could be seen from the intimation letter dtd. 25.01.2007 (PB-36) submitted to AEN of SMC wherein the assessee has intimated the commencement of construction work. Since, some part of land was sold out by the assessee; hence, a revised plan was moved on 18.01.2010 for revised approval, which was granted on 03.07.2010. Thus, we find that the original approval granted on 29.08.2006 was in subsistence as the assessee has started construction work within 12 months of approval and the revised application for approval was in continuation of original development approval, which was approved on 03.07.2010. For better appreciation of law, it would be relevant to reproduce the Explanation with section 80IB(10) of the Act as under:

“(10) The amount of deduction in the case of an undertaking developing and building housing projects-approved before the 31st day of March, [2008] by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,—

- (a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,—*
 - (i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;*
 - (ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004 ⁵[but*

not later than the 31st day of March, 2005], within four years from the end of the financial year in which the housing project is approved by the local authority;

§[(iii) in a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.]

Explanation.—For the purposes of this clause,—

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the ^zdate of completion of construction of the housing project shall^z be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;"

8. Thus, the clause (i) of Explanation to section 80IB(10) provides that where approval for housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority on 29.08.2006, hence, as per this Explanation to section 80IB(10) of the Act, the housing project would be deemed to have been approved from first housing project was approved by the Local Authority on 29.08.2006 and not from second approval dated 03.07.2010 as claimed by the Revenue.

9. So far, the contention of the Revenue that first approval was not in the name of the assessee is concerned and second approval

is in the name of partner of the assessee and there is no reference of first approval. We find that this contention is not tenable in law. As there is no provision which says that Local Authority should mention the reference of first Approval. Further, the approval dated 03.07.2010 makes reference as revised plan, which means it was in continuation to original approval. As the developer of land are required to take permission for development. In this case, the land was taken in possession by the assessee vide agreement to sale on 11.07.2006, registered with Sub Registrar, but it was not executed as sale deed and therefore, the name of the assessee did not figure in Revenue records. Therefore, the development permission was given in the name of original landowner Shri Ashokbhai Vallabhai Sheladiya. Since the permission was taken for the same piece of land for same original plan hence, original approval even though not in the name of the assessee would be deemed to be valid approval which is apparent from Explanation to section 80IB(10) as reproduced above. This view is further supported by decision of Hon`ble Jurisdictional High Court of Gujarat in the case of CIT vs. Radhe Developers [2012] 341 ITR 403 (Guj) wherein it was held as '**45. Under the circumstances, we**

are of the opinion that the Tribunal committed no error in holding that the assesseees were entitled to the benefit under Section 80IB (10) of the Act even where the title of the lands had not passed on to the assesseees and in some cases, the development permissions may also have been obtained in the name of the original land owners.”

10. In view of above, ratio laid down by Hon`ble jurisdictional High Court of Gujarat where the original approval was taken in the name of original owner and subsequent approval in the name of the assessee it does not make any difference so long approval plan and lay out are same. The ld. A.R. has drawn our attention to layout plan placed at Page No. 37 and revised layout Plan at Page No. 47 of Paper Book which are same i.e. for approval of low rise type residential building. The ld. A.R. also referred clause 3.2.5 of Development Control Rules, which prescribed the procedure for securing development permission placed at Page No. 66 of Paper Book, according to which development permission would expiry if work is not commenced within one year, provided that the Competent authority may on application made to it before the expiry of one year period may extend such further period of one

year by charge fee of Rs. 300 for renewal of development permission. Thus, we find that the assessee has taken renewal further renewal permission on 03.07.2010., which was in continuation of original permission dated 29.08.2006. Hence, we observe that the assessee has taken permission for development of housing project before 31.03.2008. In view of this matter, the assessee is eligible for deduction u/s. 80IB (10) of the Act. We may mention that decision relied by the Ld. CIT (A) in the case of K. G. Developers v. DCIT [I.T.A.No. 1414/Ahd/2014 dtd. 13.06.2017] is not applicable in the present case as in said case original development permission dated 19.07.2006 was taken for construction of row houses whereas fresh second approval 16.03.2009 was taken for housing project towards high rise building, hence, the second approval was treated as fresh approval by Tribunal being approval of altogether for different project and benefit of section 80IB(10) was denied. However, in the present case, the original approval dtd. 29.08.2006 and revised approval dtd. 03.07.2010 are for same housing project, same lay out plan for construction of low-rise type building. Hence, second approval cannot be treated as fresh approval as it was necessitated due to

sale of some part of land and was therefore, in continuation of original approval. Therefore, the development permission obtained before the cut-off date of 31.03.2008. Hence, the assessee is entitled to deduction u/s. 80IB (10) of the Act. In view of these facts and circumstances, we direct the AO to allow the deduction under section 80IB (10) of the Act as claimed by the assessee. Accordingly, this ground of appeal of the assessee is allowed.

11. In the result, the appeal of the assessee stands allowed.

12. Order pronounced in the open court on 31-08-2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

Sd/-

(ओ.पी.मीना/O.P.MEENA)

न्यायिकसदस्यतथा/JUDICIAL MEMBER लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

सुरत Dated: 31st August, 2018 / OPM

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

1.अपीलार्थी/ The Appellant; 2. प्रत्यर्थी/ The Respondent; 3. आयकरआयुक्त (अपील) The CIT(A)4.आयकरआयुक्त / Pr. CIT 5.विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/D.R. (ITAT) 6. गार्डफाईल / Guard file ITAT.

By order

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Assistant Registrar, Surat