

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI G.S. PANNU (VP) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 3252/MUM/2017  
Assessment Year: 2013-14**

The ACIT-18(3), R No. 609, 6 <sup>th</sup> Floor, Earnest House, Nariman Point, Mumbai - 400021	<b>Vs.</b>	M/s Rattanchand Rikhabdas Jain Chemical Works, 428, Abhay House, Kalbadevi Road, Gowind Wadi, Mumbai - 400002  PAN: AAJFR7028L
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri J. Saravanan (DR)

Assessee by : Shri Nitesh Joshi, Sonakshi  
Jhunjhunwala (AR)

Date of Hearing: 03/10/2018  
Date of Pronouncement: 24/10/2018

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the revenue against the order dated 17.02.2017 passed by the Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-29, Mumbai, for the assessment year 2013-14, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee a partnership firm undertaking business activities of developers and builders, filed its return of income for the assessment year under consideration declaring the total income of Rs. 70,62, 93,650/-. The assessee also filed revised return declaring the total income of Rs. 52,27,140/- after claiming deduction u/s 80IB of the Act. The return was processed u/s 143 (1) of the Act. Subsequently, the case was

selected for scrutiny and statutory notices u/s 143 (2) and 142 (1) were issued. In response to the said notices, the authorized representative appeared before the AO and also furnished the details and discussed the case. The assessee had claimed to have completed the housing project Mayuresh Residency and claim deduction u/s 80IB. However, the enquiry conducted u/s 131 to verify the claim of deduction. The assessee filed original return without claiming deduction. However, the revised return was filed after claiming deduction. Enquiry revealed that the project premises consisting of five Wings, Club house, bank and other structures of which Wings D and E were incomplete and worked was still going on. The club house front gate was incomplete and scaffoldings were seen on these structure. The workers were also seen working along with construction material in stockyard and temporary shades for laborers worked there. The AO rejecting the contention of the assessee made disallowance of deduction claimed u/s 80IB of the Act and determined the total income of the assessee at Rs. 70,62,34,560/-. In the first appeal, the Ld. CIT(A) decided the issue in favour of the assessee and directed the AO to allow the deduction and delete the addition.

3. Aggrieved by the order of Ld. CIT (Appeals), the revenue has preferred this appeal before the Tribunal on the following effective ground:-

1. *“on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance of Rs. 70,10,07,418/- made by the A.O. under section 80IB of the Act on account the project “Mayuresh Residency” t Bhandup which was not completed within the stipulated time as discussed by the AO in para 7.9 & 10 of the assessment order.*
2. *On the facts and in the circumstances of the case and in law, the CIT (A) has erred in deleting the disallowance of claim of Rs. 70,10,07,418/- u/s 80IB of the Act by relying upon ITAT’s order in the case of the assessee in*

*A.Y. 2010-11 wherein ITAT has given a finding of fact that the project has been completed within the stipulated time limit of 31.3.2013 and there is no violation of any of the conditions mentioned in the proviso of section 80IB (10) of the Act, which order has not been accepted by the department and appeal filed before the High Court on the ground that ITAT has not recorded reasons of satisfaction before admitting and allowing new additional documents produced by the assessee for the first time, as envisaged in Rule 29 of the ITAT Rule, 1963.*

*3. For the above mentioned reason and any other reasons that may be urged at the time of hearing, it is requested that the order of the CIT (A) be quashed and that of the A.O. be restored”*

4. Before us, the Ld. Departmental Representative (DR) relying on the assessment order submitted that the Ld. CIT (A) has erred in deleting the disallowance of Rs. 70,10,07,418/- made by the AO on the ground that the project was not completed within the stipulated time as discussed by the AO. The Ld. CIT (A) has further relied on the decision of ITAT, Mumbai rendered in the assessee's own case for the A.Y. 2010-11 vide which the ITAT has held that the project has been completed within the stipulated time ignoring the fact that the department has not accepted the decision and has assailed the same before the Hon'ble High Court. On the basis of the aforesaid reasons, the Ld. DR submitted that the impugned order is liable to be set aside.

5. On the other hand, the Ld. counsel for the assessee submitted that the assessee's project was approved on 10.09.2007 i.e. during the F.Y. 2007-08 which was required to be completed within five years from the end of the said financial year i.e. up to 31<sup>st</sup> March, 2013. In the present case, the project was completed before the due date and a certificate dated 18.03.2013 was issued by the concerned authority which was submitted before the AO. In response to

the letter dated 6<sup>th</sup>. August,2013, the concerned authority of Brihan Mumbai Mahanagar Palika has stated that the completion certificate has been issue after following the procedure laid down under M.M.C Act,1888. The Ld. counsel further submitted that in the revised return, the assessee has clarified as to why revised return was filed claiming the deduction. The Ld. counsel further submitted that the assessee's case is covered by the decision of the Mumbai Bench of the Tribunal rendered in the assessee's own case for the A.Y. 2010-11. Since, the Ld. CIT (A) has decided the issue in favour of the assessee by following the decision of the ITAT, Mumbai, there is no merit in the appeal of the revenue.

6. We have heard the rival submissions and also gone through the order passed by the authorities below in the light of the rival contentions. The only issue raised by the department is that the Ld. CIT (A) has wrongly deleted the disallowance of Rs. 70,10,07,418/- made by the AO for the reason that the assessee has not completed the project within the stipulated period of five years in order to avail deduction u/s 80IB (10) of the Act. We notice that the coordinate Bench has dealt with the identical issue in the assessee's own case ITA No.1531/Mum/2014 and ITA No.1532/Mum/2014 for the A.Y. 2010-11 and 2011-12 and the Bench held that the assessee has completed the project within five years from the end of the relevant year in which the approval was taken. The relevant portion of the order passed by the Ld. CIT (A) reads as under:-

*“4. We find that the Revenue is not appeal against the findings of CIT (A) that assessee has not allotted more than one residential unit to any individual, or to spouse or minor children of any individual to whom any other residential unit is already allotted. Accordingly, he held that the conditions are not contravened in respect of the provisions of section 80IB(10)(e) and (f) of the Act. This finding is unchallenged and revenue is not in appeal against this finding. But, aggrieved, against the withdrawal of deduction u/s 80IB(10) of the*

*Act for non completion of project up to 31.3.2013, the assessee is in second appeal before Tribunal.*

5. *We have heard rival contentions and gone through the facts and circumstances of the case, Befroe us the Ld. counsel for the assessee Shri. Percy Pardiwala took us through the completion certificate granted by BMC vide dated 10.9.2007 in respect of this project, which is enclosed at pages 13 to 25 of assessee paper books. The Ld. Counsel further took us through occupation certificate issued by Municipal Corporation of Grater Mumbai vide CE/1154/BPES/AS dated 26.2.2013 and also another approval CE/1154/BPES/AS dated 4.3.2013 this approvals covers full occupation permission for blocks "A", "B", "C", "D" and "E" of building comprising of stilt + 1<sup>st</sup> to 19<sup>th</sup> + (Part) 20<sup>th</sup> upper floors and ground floor of this project. These approvals are enclosed at pages 33-37 of assessee's paper book. As regards to the withdrawal of claim for A.Y. 2012-13, the ld. Counsel for the assessee stated that due to wrong impression, the assessee first withdrawn his claim and then revised the same claim before the pendency of assessment proceedings. The Ld. Counsel for the assessee informed that this claim is pending before the CIT (A) for the A.Y. 2012-13. In view of the above facts, the Ld. counsel for the assessee stated that the building was completed on 31.3.2013 and not otherwise, as alleged by the CIT (A) in his order. We find from the above facts that the project is completed and occupation in respect of all the blocks that is "A", "B", "C", "D" "E" are obtained within stipulated time limit of 31.3.2013 and there is no violation of any of the conditions mentioned in the provisions of section 80IB(10) of the Act. Accordingly we have no hesitation in allowing this claim of assessee and accordingly the same is allowed."*

7. We further notice that the Ld. CIT (A) has decided the issue involved in this case by following the decision of the coordinate Bench rendered in the assessee's own case for the A.Y. 2010-11 and 2011-12 in which the coordinate Bench has held that the assessee has completed the project within the stipulated period. The operative part of the order of the Ld. CIT (A) reads as under:-

*“4.3.3 Now, the appellant had filed copy of the order of the Hon’ble ITAT for A.Ys. 2010-11 and 2011-12 where exactly identical issue has been decided in favour of the appellant by the Hon’ble ITAT. The only issue involved is the completion of the project within the stipulated time. While the AO held that it has not been completed within the stipulated time, the Hon’ble ITAT has categorically stated in its order that project has been completed within the stipulated time.*

*4.3.4 Respectfully following the decision of the Hon’ble ITAT in the appellant’s own case on the same issue for the immediately preceding assessment years, these grounds of appeal filed by the appellant are allowed.”*

8. Since, the Ld. CIT (A) has decided the issue in favour of the assessee by following the decision of the coordinate Bench rendered in the assessee’s own case for the A.Y. 2010-11 and 2011-12, we do not find any reason to interfere with the decision of the Ld.CIT (A). Moreover, the Ld. DR has not brought to our notice that the operation of the order rendered by the coordinate Bench, relied upon by the Ld. CIT (A), has been stayed by the Hon’ble High Court. Under these circumstances, we find no merit in the appeal of the revenue. Hence, we uphold the findings of the Ld. CIT(A) and dismiss all the grounds of appeal of the revenue. Accordingly, we direct the AO to allow the deduction claimed by the assessee u/s 80IB of the Act.

In the result, appeal filed by the revenue for assessment year 2013-2014 is dismissed.

Order pronounced in the open court on 24<sup>th</sup> October, 2018.

*Sd/-*  
(G.S. PANNU)

VICE PRESIDENT

*Sd/-*  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 24/10/2018

Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai