

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5368/Del/2015  
(Assessment Year: 2012-13)

ACIT, Circle-22(2), New Delhi	Vs.	SG Estates Ltd, 105-106, Deep Shikha Tower, Rajendra Place, New Delhi PAN: AAACS2843L
(Appellant)		(Respondent)

Revenue by :	Shri Ved Prakash Mishra, Sr. DR
Assessee by:	Shri Madhur Aggarwal, Adv Shri Piyush Kumar Kamal, Adv
Date of Hearing	16/10/2018
Date of pronouncement	07/01/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by The Assistant Commissioner of Income Tax, Circle – 22 (2), New Delhi (the learned AO) against the order of the Principal Commissioner of Income Tax (OSD) (Appeals) – 8, New Delhi dated 8/6/2016 for assessment year 2012 – 13, raising the solitary ground of appeal as under :-

"1. That on the facts and in the circumstances of the case the Id CIT(A) has erred in law and in deleting the disallowance of Rs. 1,98,87,408/- made by AO on account of deduction claimed u/s 80IB of the Income Tax Act, 1961."

2. The brief facts of the case is that assessee is a company engaged in the business of real estate developers and builders who filed return of income of INR 12002400 on 25/9/2012. It claimed deduction u/s 80 IB (10) of the act. The learned assessing officer disallowed the claim holding that the requirement of section 80IB (10)(c) is not satisfied with respect to the specified area of the residential units. He held that only 72 out of 122 residential units in one project and 128 out of 154 residential units

in another projects satisfy that condition. Therefore, he disallowed the entire deduction of INR 19887408/- under section 80 IB (10) of the act and determined the total income of the assessee at INR 31889808/- by making an order u/s 143 (3) of the act on 31/3/2014.

3. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before The Principal Commissioner Of Income Tax (Appeals) who vide order dated 8/6/2016 allowed the claim of the assessee following the order in case of the assessee by the coordinate bench for assessment year 2009 – 10. Therefore, revenue aggrieved with the order of the learned CIT(A), has preferred this appeal.
4. The learned departmental representative vehemently submitted that the various residential units constructed by the assessee are beyond the specified area eligible for deduction u/s 80 IB of the act. Therefore, necessary conditions have been violated by the assessee, full deduction claimed by the assessee is disallowable. He further stated that there is no provision in the income tax act to allow the deduction proportionately.
5. The learned authorised representative submitted a paper book wherein he stated that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Delhi High Court in assessee's own case for assessment year 2009 – 10.
6. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee has constructed two housing projects which are eligible for deduction u/s 80 IB of the income tax act. In the 'Impression Vasundhara' project there were 122 residential unit out of which 50 units has the built up area exceeding 1000 ft<sup>2</sup>. Further, in the project "Impressions 58" has 154 residential units out of which 26 units exceeds the built up area of 1000 ft<sup>2</sup>. Therefore the learned assessing officer was of the view that assessee is not eligible for deduction u/s 80 IB of the income tax act. Hence, disallowance of INR 19887408 was made. The learned CIT(A) allowed the claim of the assessee following the decision of the coordinate bench in assessee's own

case for assessment year 2009 – 10, which has also been upheld by the Hon'ble Delhi High Court in ITA number 478/2015 dated 29/07/2015. The Hon'ble High Court has held that the provision is capable of being construed in a manner that is beneficial to the assessee by allowing the deduction on 'pro rata' basis to the number of residential units that have complied with the requirement of section 80 IB of the maximum built up area. In view of this, we do not find any infirmity in the order of the learned CIT(A) and direct the learned assessing officer to allow the claim of the assessee on 'pro rata' basis as directed by the Hon'ble Delhi High Court in assessee's own case for earlier years. Accordingly, the ground No. 1 of the appeal of the revenue is dismissed.

7. Accordingly, appeal of the revenue is dismissed.

Order pronounced in the open court on 07/01/2019.

-Sd/-

(BHAVNESH SAINI)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated:07/01/2019  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi