



**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI  
BEFORE SHRI M.BALAGANESH, AM  
&  
SHRI RAM LAL NEGI, JM**

**ITA No.6448/Mum/2016  
(Assessment Year :2010-11)**

DCIT-CC 7(2) Room No.655 Aayakar Bhavan Mumbai – 400 020	Vs.	M/s. Kores India Ltd., Kores House, Plot No.10 Off. Dr. E. Moses Road Worli, Mumbai – 400 018
<b>PAN/GIR No.AAACK5069Q</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Uday Bhaskar Jakka
Assessee by	Shri Mani Jain & Shri Prateek Jain
<b>Date of Hearing</b>	<b>29/01/2019</b>
<b>Date of Pronouncement</b>	<b>30/01/2019</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This is an appeal filed by the Revenue directed against the order of Commissioner of Income Tax (Appeals)– 49 (In short 'CIT(A)'), dated 30/08/2016 for A.Y.2010-11 in the matter of order passed u/s.143(3) of the Income Tax Act, 1961.

2. The ground No.1 to 3 raised by the Revenue are with regard to objecting the action of the Ld. CIT(A) in granting deduction u/s.80IB (10) of the Act on various grounds. For the sake of convenience, the grounds raised by the Revenue in this regard are as under:-

1. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the deduction u/s.80-IB(10) of the Income Tax Act, 1961 to the assessee in respect of the Kores Towers project, in violation of clause (a) of section 80-IB(10) which stipulates that the deduction will be admissible if the development & construction of the housing project commences on or after 01.10,1998 without appreciating the fact that the commencement of the said project was in September, 1997 well before the date of 01.10.1998?"*

2. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the deduction u/s.80-IB(10) of the Income Tax Act, 1961 to the assessee in respect of the Kores Towers Project without appreciating that some of the residential units had a built-up area in excess of the 1000 sq.ft. is in violation of the conditions as stipulated in clause (c) of section 80-IB(10) for the housing project to be eligible for deduction u/s.80-IB(10)."*

3. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) had failed to appreciate that the assessee had violated the provisions of clause (c) of section 80-IB(10) by joining the two adjacent flats in respect of some buyers after getting the occupation certificate for the Kores project and without taking prior approval from the Municipal Authority before making the changes to the approved plan?"*

3. At the outset, Ld. AR before us stated that this issue is covered in assessee's own case by the Co-ordinate Bench decision of this Tribunal for A.Yrs 2003-04 to 2009-10 and the Ld. CIT(A) had just followed those decisions and granted relief to the assessee.

4. In response to this, the Ld. DR stated that the Revenue's appeal against the orders passed by this Tribunal on the impugned issue is pending before the Hon'ble Bombay High Court. We find that the Ld. CIT(A) had adjudicated the issue under dispute with regard to claim of deduction under section 80IB(10) of the Act by following the various decisions of this Tribunal in assessee's own case by reproducing the operative portion thereon as under:-

*“5.13 I have carefully examined the facts of the case, the stand taken by the A.O in the assessment order the grounds of appeal and the written submissions filed by the appellant during the hearing proceedings.*

*5.14 The A.O. has observed that the appellant has sold 17 flats in Kores Nakshatra East project during the year under consideration. The A.O. has disallowed the claim of deduction u/s.80IB(10) on the following grounds :*

*(i) The approval granted for the Kores Nakshatra East project on 19.01.2005/17.11.2006 were nothing but the approval of revised development plans which was originally approved on 07.06.1996 and for which the project commenced on 19.06.1997. Therefore, the appellant did not qualify the condition that the profits should be derived from a housing project started on or after the first day of October, 1998.*

*(ii) The appellant has also violated the condition that the built up area of the flat should be below the limit of 1000 sq.ft., considering that there were instances where two flats had been combined resulting in the total built up area of such flat being more than 1000 sq.ft. The A.O. has referred to the statement with respect to Tower No.6 (Ashwini) of Nakshatra Project recorded in the course of search on 19.09.2006.*

*(iii) There is a violation of clause (e) and (f) to provisions of Section 80IB(10) which requires that assessee cannot sell more than one residential unit in a housing project to any person, not being an individual or to a person, being an individual, no other residential unit in such a housing project is to be allotted to the individual or the spouse or the minor children of such individual.*

*5.15 The appellant has submitted that there was no such violation as alleged by the A.O. and it was eligible for deduction u/s.80IB(10) on the following grounds :*

*(i) The Kores Nakshatra East, North and West projects have been constructed on the plot of land admeasuring 29,816.96 sq. metres and comprising 15 buildings. The Commencement Certificate of buildings in the North project is 19.01.2005, in the West project is 17.11.2006, and in the East project, it is 19.01.2005 for Building Nos. 1, 2, 3, & 4 and 17.11.2006 for Buildings Nos. 14 & 15. The approval for the project Nakshatra was granted by Thane Municipal Corporation on 19.01.2005 (second-plan) and on 17.11.2006 (third plan) and it is not a continuation or a revised plan of the initial housing project Kores Towers which commenced on 19.06.1997 (first plan).*

(ii) *The A.O's allegation that two flats of the Kores Nakshatra project were combined together by the appellant, resulting in the built up area of some of the flats exceeding 1000 sq.ft. was not borne out by any specific instances of the same that the appellant itself has combined 2 flats together making the units more than 1000 sq.ft..*

(iii) *The appellant has relied on the decision of the ITAT, Mumbai dated 16.02.2016 in its own case in ITA No.3463 to 3469/Mum/2014 for A.Y. 2003-04 to A.Y. 2009-10 wherein the claim of the appellant u/s.80IB(10) of the Act has been allowed on the projects under consideration.*

6. *In the order of the ITAT, Mumbai, dated 16.02.2016 in the appellant's case, the issues raised in this appeal have been considered and the findings given on these issues with reference to the project Kores Nakshatra is as under:*

6.1 *Whether approval for project Kores Nakshatra granted by Thane Municipal Corporation on 19.01.2005 (second plan) and on 17.11.2006 is a continuation or a revised plan of the initial housing project Kores Towers which commenced on 19.06.1997 (first plan).*

(i) *The building plans for the project Kores Towers was sanctioned by Thane Municipal Corporation (TMC) on 07.06.1996 and Commencement Certificate No. 2057 dated 19.06.1997 for four buildings, namely, Neha, Nandini, Anand and Rekha. After completion and certification, the Occupation Certificate for the above four buildings were received on 09.04.2001, 12.04.2002, 28.02.2002 and 30.08.2003. Building plan for another tower Devpriya was submitted and approved by the local authority on 28.09.2003.*

(ii) *On one portion of the land marked as Plot B in the plan dated 07.06.1996, the factory was situated at the relevant point of time and on the plot marked as Plot A, five buildings of the project Kores Tower have been developed. It was only after the formalities for the closure of factory was completed in 2003, the assessee demolished the said factory and proposed to develop the project named "Kores Nakshatra" which was approved by building plans dated 19.01.2005 (for buildings 1 to 9, 14 & 15) and 17.11.2006 (for buildings 10, 11, 12 & 13). It has been held that the five buildings (A-1, A-2, B-1, B-2, C) are part of the project Kores Towers, while buildings 1 to 9, 14 & 15 and 10 to 13 are part of the project, Kores Nakshatra. Kores Tower and Kores Nakshatra"are altogether different housing projects." \**

(iii) *A building is one and independent project for the purpose of claiming deduction u/s.80IB(10), therefore, approval with regard to*

*building 1 to 9, 14 & 15 and 10 to 13, which is independent in itself, could not be linked to approval dated 07.06.1996, wherein these buildings were not even visualized as the assessee had used 0.95% of the FSI available on the area on 14,398.27 sq. metres and therefore, the A.O. was not justified in rejecting the claim u/s.80IB(10) of the Act.*

*(iv) Merely because in the Commencement Certificate dated 19.01.2005 for Buildings 1 to 9 and 14 & 15, the word 'Revised' has been mentioned on the top by the local authorities, and the buildings, A-1, A-2, B-1 and B-2 have also been shown, it does not imply that the buildings 1 to 15 of Kores Nakshatra project were extension of the same project earlier developed by the company. This is technical and the procedure adopted by the concerned municipal authorities for the same Survey Number or for an amalgamated plan that for convenience they show the entire layout plan including the earlier buildings in subsequent approvals as well. The procedures adopted by the municipal corporation cannot be used as a weapon against the assessee to disallow the claim u/s.80IB(10) of the IT. Act, 1961 because beneficial provision of the IT. Act should be interpreted liberally and the same has been done in CIT vs Vandana Properties (ITA No.3633 of 2009, Hon'ble Bombay High Court).*

*(v) It has been concluded in para 4.23 that "in view of above legal discussions, the assessee's claim u/s.80IB(10) of the Act cannot be negated on the ground. Subsequent projects approved on 28.09.2003 and 19.01.2005 are not extension of building approved on 07.06.1996. Subsequent projects are independent of earlier one, so entitled for deduction on this account for the reasons discussed above.*

**6.2** *Whether the appellant company has combined two flats to make the built up area more than 1000 sq.ft. with respect to Project Kores Nakshatra :*

*(i) In para 4.29, it has been observed by the ITAT that the residents whose statements were taken during the course of search were residents of Kores Towers and not Kores Nakshatra and no cognizance of the same would be taken by considering the issue of disallowance u/s.80IB(10) with respect to the project Kores Nakshatra.*

*(ii) As regards the statement given by Shri V.V. Modak, Associate Architect, it has been observed in para 4.33 that 'on perusal of the statement of the Architect, it is clear that combination of flats during the construction stage calls for*

*voluminous procedures by the TMC. The alteration in plan would also lead to rejection of Occupation Certificates. The assessee would certainly not suo-motto combine the flats as the same would not lead to rejection of Occupancy Certificate. Also, the residents have stated that the flats were combined after the "furniture" possession on their own request. Thus, the assessee has built individual units of 1000 sq.ft. each as per approved plan, sold the flats in the same manner and therefore, the assessee was entitled to get allowance u/s.80IB(10).*

(iii) *It has been further held in para 4.35 and 4.36 as under;*  
*"4.35 - The claim of assessee u/s.80IB(10) of the Act is supported by the decisions of Co-ordinate Bench in the case of Emgeen Holdings P. Ltd. (supra) and G.V. Corporation (supra) and Kruti Constructions (supra) as discussed above. The assessee's claim on the ground of size of flats cannot be negated. Even the provision of clause (f) to Section 80IB(10) of the Act which has been inserted in the Act with effect from 01.04.2010 cannot negate the claim of the assessee as the same is not retrospective. Accordingly, the claim of the assessee u/s.80IB(10) for A.Ys. 2005-06, 2006-07 and 2007-08 are allowed.*

*4.36- Facts for the A.Ys 2008-09 and 2009-10 are similar to that of earlier years, so following the same reasoning as discussed above, the claim of assessee u/s.80IB(10) of the Act for these years is also allowed as claimed by the assessee.*

*6.3 In view of the above said findings of the ITAT in the appellant's own case for A,Yrs. 2005-06 to 2009-10, I am of the considered opinion that the A.O. was not correct in disallowing the claim of the appellant u/s.80IB(10) on the grounds as summarized in para 5.14 above. The issues raised by the A.O. in A.Y. 2010-11 are found to be covered by the above said decision of the ITAT and following the same, the AO is directed to allow deduction u/s.80IB(10) to the appellant. The ground is allowed."*

5. Since, the decisions of this Tribunal in assessee's own case on the impugned issue were followed by the Ld. CIT(A), we do not find any infirmity with this order. Accordingly, the grounds 1 to 3 raised by Revenue are dismissed.

6. Ground No.4 raised by the Revenue is with regard to the action of the Ld. CIT(A) deleting the disallowance u/s.14A of the Act amounting to Rs.18,47,380/-. The brief facts of this issue are that the assessee earned dividend income of Rs.1,27,112/- and claimed the same as exempt in the return of income. The assessee made suo moto disallowance u/s.14A of the Act r.w.r.8D(2)(iii) of the rules in the return of income in the sum of Rs.1,59,517/-. The Ld. AO while completing the assessment also made disallowance of interest under Rule 8D(2)(ii) to the tune of Rs.24,47,380/- Ld. CIT(A) appreciated the fact that assessee is having interest free funds to the tune of Rs.89.94 Crores by way of share capital and reserves and surplus as against investment of Rs.2.25 Crores which are capable of yielding exempt income. Accordingly, he held that no disallowance under Rule 8D(2)(ii) towards interest is warranted by placing reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. HDFC Bank Ltd., reported in 366 ITR 505. However, he directed the Ld. AO to restrict the disallowance u/s.14A to the extent of Rs.1,59,517/- which was suo moto made by the assessee in the return of income under rule 8D(2)(iii) of the rules. Aggrieved, the Revenue is in appeal before us.

7. We have heard the rival submissions. At the outset, we find that assessee itself had made suo moto disallowance u/s.14A r.w.r. 8D2(iii) to the tune of Rs.1,59,517/- which is more than the dividend income earned by the assessee to tune of Rs.1,27,112/-. The Ld. CIT(A) had given a categorical finding that assessee is having sufficient own funds for making

investments. In view of this, we do not deem it fit to interfere with the order of Ld. CIT(A). Accordingly, the ground No.4 raised by the Revenue is dismissed.

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

Order pronounced in the open court on this 30/01/2019

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

**Sd/-**  
**(M. BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 30/01/2019

Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai