

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SMT BEENA A PILLAI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4748/Del/2015
(Assessment Year: 2012-13)

DCIT, Circle-25(1), New Delhi	Vs.	Tulip Infratech Pvt. Ltd, 21, Barakhamba Road, New Delhi PAN: AACCT3755E
(Appellant)		(Respondent)

Revenue by :	Smt Naina Soin Kapil, Sr. DR
Assessee by:	Shri Salil Aggarwal, Adv Shri Shailesh Gupta, CA
Date of Hearing	22/01/2019
Date of pronouncement	28/02/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the revenue against the order of the Id CIT(A)-9, New Delhi dated 27.03.2015 for the Assessment Year 2012-13.
2. The revenue has raised the following grounds of appeal:-
 - “1. *The Id CIT(A) has erred in deleting addition of Rs. 8,52,96,656/- made by AO on account of disallowance of deduction claimed u/s 80IB of the Act , 1961 with reference to the specific and detailed findings in the assessment order.*”
3. The fact shows that the assessee is a company engaged in the business of real estate development . Main source of income is from sale of flats constructed and develop by them under the various projects. The assessee filed its return of income on 28/9/2012 declaring an income of INR 9 4104348. The assessee has claimed deduction under section 80 IB (10) of the income tax act amounting to INR 85296656. During the course of assessment proceedings, the learned assessing officer examined the claim of the assessee. The learned assessing officer denied the claim of the assessee. The claim of the assessee was that that if there is a violation of the conditions prescribed under that section then proportionate deduction may

be allowed. The learned AO denied the same stating that whether the allowances to be given in full or to be rejected. Therefore the claim of the assessee for deduction under that section is rejected. The learned AO also noted that similar additions were also made in the case of the assessee for assessment year 2007 – 08 which has been deleted by the learned CIT – A and has filed the appeal before the coordinate bench. Accordingly the assessment under section 143 (3) of the act was passed on 17/7/2014 determining the total income of the assessee at INR 1 79863488/-. The assessee challenged the same before the learned CIT – A. The learned CIT – A passed an order dated 27/3/2015 allowing the claim of the assessee following the decision by the learned CIT – A in earlier years. Therefore the revenue aggrieved with the order of the learned CIT – A is in appeal before us.

4. The learned departmental representative relied upon the order of the learned assessing officer.
5. The learned authorised representative submitted that in the case of the assessee for assessment year 2011 – 12 the identical issue has been decided by the coordinate bench and therefore this issue is now covered in favour of the assessee.
6. We have carefully considered the rival contention and perused the orders of the lower authorities. The issue involved in this appeal is whether the proportionate deduction under section 80 IB of the income tax act is required to be given to the assessee when there is violation of certain condition in some of the dwelling units. This issue is decided in favour of the assessee by the coordinate bench in assessee's own case for earlier years, which is also supported by the decision of Honourable Karnataka High court in Pr. Commissioner Of Income Tax vs M/S Oceanus Dwellings Pvt. Ltd. on 8 March, 2017. Therefore we do not find any merit in the appeal of the revenue. Hence same is dismissed.

Appeal of revenue is dismissed.

Order pronounced in the open court on 28/02/2019.

-Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:28/02/2019
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi