

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "बी" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

**BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM**

**आयकर अपील स / ITA No.438/PUN/2017**

**निर्धारण वर्ष / Assessment year : 2012-13**

The Asst. Commissioner of Income Tax,  
Circle – 12, Pune.

..... अपीलार्थी /  
Appellant

**बनाम v/s**

Om Associates,  
383/A, Shaniwar Peth,  
Pune – 411030.

..... प्रत्यर्थी /  
Respondent

PAN : AABFO6002D.

Assessee by : Shri Rajeev Thakkar.

Revenue by : Shri Sanjay Punglia.

सुनवाई की तारीख / Date of Hearing : 27.02.2019	घोषणा की तारीख / Date of Pronouncement: 19.03.2019
---	---

**आदेश / ORDER**

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by Revenue is emanating out of order of Commissioner of Income-Tax (A) – Pune – 5, Pune dated 24.10.2016 for A.Y. 2012-13.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a Partnership firm stated to be engaged in the business of development of housing project at Pune. Assessee filed its return of income for A.Y. 2012-13 on 21.09.2012 declaring total income at Rs.37,14,667/-. The case was selected for scrutiny and thereafter

assessment was framed u/s 143(3) of the Act vide order dt.27.03.2015 and the total income was determined at Rs.4,92,99,970/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.24.10.2016 (in appeal No.PN/CIT(A)-5/Dy.CIT, Cir-12, Pune/130/2015-16) granted substantial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

*“1. On the facts and in the circumstances of the case, the learned CIT(A) has erred in allowing the pro-rata deduction u/s 80IB(10) of the Income Tax Act, 1961 amounting to Rs.4,55,85,304/-. The Ld. CIT(A) failed to appreciate that the deduction u/s 80IB(10) is allowable for the profits of the project as a whole and not for part of the project on pro-rata basis and there is no concept of proportionate deduction u/s 80IB(10) of the Act for the completed building or block of the project. Section 80IB(10)(a) stipulates the condition for the project as a whole and not individual units or flats of buildings.*

*2. The order of the Ld.CIT(A) be vacated on this issue and that of the AO be restored.”*

3. During the course of assessment proceedings, AO noticed that in A.Y. 2011-12 assessee had claimed deduction u/s 80IB(10) of the Act for the project “Faith” consisting of Buildings A, B, C & D, which was developed at Balewadi, Pune. The claim of deduction was disallowed by the AO. AO noted that the facts of the year for the year under consideration are similar to that of A.Y. 2011-12. The AO therefore asked the assessee as to why the claim of deduction u/s 80IB(10) of the Act not be disallowed. Assessee made detailed submissions which were not found acceptable to the AO. AO noted that as per the building permission issued by the Pune Municipal Corporation (PMC), the commencement of the project was 29.03.2007. AO noticed that building “A” was not completed. He was of the view that for being eligible to claim deduction u/s 80IB(10) of the Act, the completion of the housing project as a whole is necessary. In the case of the assessee AO noted that Building “A” could not be completed even by 31.03.2012

which was the prescribed date for completion of the project as a whole and therefore assessee had violated the mandatory conditions for being eligible to claim deduction. He was further of the view that deduction u/s 80IB(10) of the Act is allowable for the profits of the project as a whole and not for the part of the project on a pro-rata basis. He therefore held that assessee was not eligible for deduction u/s 80IB(10) of the Act for the housing project "Faith" and accordingly rejected the claim of 4,55,85,304/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who granted partial relief to the assessee for Building Nos. B, C and D which were constructed and completed by observing as under :

*"8.5 I tend to agree with the Appellant's interpretation about the factual and legal matrix of the case of Brahma Associates & Others (supra). Further, nowhere in the said case has it been stated that, wherein a project is sanctioned as a residential project and could be considered as a residential project on a standalone basis, could not be granted proportionate deduction u/s 80IB (10) of the Act. On the other hand, the said case categorically has given findings for allowing proportionate deduction. The interpretation, the AO has given to the decision of the said case and thereby denied the Appellant its claim of deduction u/s 80IB (10) of the Act, as far as the 108 residential flats in Buildings 'B', 'C' and 'D' are concerned, is according to me a misconstrued interpretation. This is especially so, when the Appellant has fulfilled all the prescribed conditions laid down in Section 80IB (10) of the Act for the said flats and when the completion certificate for the same was issued by the local authority indicating completion prior to 31-3-2012. The AO referred to the relevant Para of the said decision applicable to the facts of the said case but failed to quote the relevant Para wherein the Tribunal has directed to allow the deduction for the residential units, as applicable in the Appellant's case under consideration. My view, regarding the misconstrued interpretation by the AO, in the case of Brahma Associates & Others (supra) is further fortified by the above judicial pronouncements referred to by the Appellant and thus, denying the Appellant proportionate deduction u/s 80IB (10) is not justified. These judicial decisions have given categorical findings, that, for a housing project, if all the conditions as laid down in Section 80IB (10) of the Act are fulfilled, the assessee is entitled to proportionate deduction and/ or deduction on pro-rata basis for the part completed by it within the prescribed time limit. In the case of the Appellant, it has been seen, that the Appellant's project 'Faith' commenced on 29.03.2007 and the first and second completion certificates for Building 'B', 'C' and 'D' were issued on 31.03.2010, and 24.03.2011 well before the due date of completion of the said project i.e. 31.02.2012. The Appellant, had obtained the completion certificates for 108 residential tenements (Each building having 36 residential tenements). It is also seen that the Appellant had complied with all the conditions to be eligible for deduction u/s 80IB(10) of the Act, in respect of aforesaid 3 buildings consisting of 108 flats. The completion of these 108 flats has not been disputed by the*

*AO who has categorically so stated in the Assessment Order by relying both, on the certificate issued by the local authority and also by the report of the Valuer appointed by the AO. The Valuation Officer appointed by the AO has also confirmed, that the Assessee complied with all the conditions for granting of deduction u/s 80IB(10), as submitted by the Appellant before him. Though the aforesaid facts were considered by the AO in Para 16 of the Assessment order, the AO has commented on such the valuation report inter alia stating that" Valuation Officer had merely given the factual report" and "he has not offered any comments on whether the project is eligible for claim of deduction u/s 80IB(10)". This clearly indicates that even the report given by the Valuer appointed by the AO himself, was brushed aside lightly by the AO. In view of the discussions in the preceding paragraphs and as the Appellant had complied with the provisions laid down in Sec 80IB(10) of the Act in respect of 3 buildings for 108 residential flats constructed, and the project was entirely a residential project, relying on the ratio of the decisions of the Plethora of Judicial pronouncements cited by the Appellant. I do not find any reason, not to allow the Appellants claim of proportionate deduction u/s 80IB(10) of the Act. The Appellant is therefore, entitled to proportionate deduction u/s 80IB(10) for the 'B', 'C', 'D' Buildings constructed and completed. The AO is directed to allow deduction u/s 80IB(10) of the Act on the profit earned by the Appellant from the said Buildings. The additional ground raised by the Appellant is accordingly allowed."*

*Following the above, the AO is directed to allow deduction u/s 80IB(10) of the Act on the profit earned by the Appellant from the said buildings for the year under consideration. Accordingly, Ground No.3 raised by the Appellant is allowed."*

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

4. Before us, Ld.D.R. supported the order of AO. Ld.A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A). Ld.A.R. further submitted that in assessee's own case in A.Y. 2011-12 on identical facts, Revenue had carried the matter before Tribunal. The Tribunal (ITA No.1031/PUN/2016 order dt.06.06.2018) had dismissed the appeal of the assessee. He placed on record the copy of the aforesaid decision. He further submitted that since there are no change in the factual position in the facts of the case for the year under consideration and that of earlier year and therefore no interference to the order of Ld.CIT(A), is called for, more so, when the

Tribunal has dismissed the appeal of Revenue in A.Y. 2011-12. He thus supported the order of Ld.CIT(A).

5. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to allowability of deduction u/s 80IB(10) of the Act. We find that identical issue arose in assessee's own case in A.Y. 2011-12 as AO while deciding the issue had followed the order of AO for A.Y. 2011-12. We find that in A.Y. 2011-12, Ld.CIT(A) had decided the issue in favour of assessee and against the order of Ld.CIT(A), Revenue had carried the matter before Tribunal. The Co-ordinate Bench of the Tribunal has decided the issue in favour of the assessee and dismissed the appeal of Revenue by observing as under :

*“6. We heard both the sides on the limited issue of allowing deduction u/s.80IB(10) of the Act and perused the orders of AO and the CIT(A) and the decisions relied upon by the assessee. On going through the finding of CIT(A) on this issue, we find the CIT(A) has rightly allowed the deduction u/s.80IB(10) of the Act to the assessee after considering the following important aspects :*

- 1. It is undisputed fact that the assessee completed construction of 108 flats and obtained completion certificate for the same.*
- 2. As per the Valuation Officer's report, the assessee has complied with the conditions provided in section 80IB(10) and AO ignored the same and failed to comment on the eligibility of section 80IB(10) of the Act.*
- 3. AO failed to appreciate the judgment of jurisdictional High Court in the case of CIT Vs. Brahma Associates (supra) in the right perspective and chose to reproduce part of the judgment to his convenience to deny the claim of the assessee.*

*It is a settled legal proposition that the claim of deduction is allowable on pro-rata basis qua the complete part of the project. Considering the above, we are of the opinion that the assessee is entitled to pro-rata deduction u/s.80IB(10) of the Act for the buildings B, C and D. We therefore, uphold the order of CIT(A). The grounds raised by the Revenue are dismissed.”*

6. The aforesaid decision of the Tribunal has not been set aside, stayed or over-ruled by Higher Judicial Authorities. Before us, Revenue

has also not placed any material on record to point out any distinguishing feature in the facts of the present case and that of earlier year nor has placed any contrary binding decision in its support. We therefore following the decision of Co-ordinate Bench of the Tribunal in assessee's own case in A.Y. 2011-12 and for similar reasons find no reason to interfere with the order of Ld.CIT(A) and **thus the grounds of the Revenue are dismissed.**

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

Order pronounced on 19<sup>th</sup> day of March, 2019.

**Sd/-**  
**(PARTHA SARATHI CHAUDHURY)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 19<sup>th</sup> March, 2019.  
Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-5, Pune.
4. Pr.CIT, Pune-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,  
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune