

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI RAVISH SOOD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 489/MUM/2016  
Assessment Year: 2012-13**

ACIT, Central Circle-1(2),  
Room No. 906,  
PratisthaBhavan, 10<sup>th</sup> floor,  
Old CGO Building Annexe,  
Mumbai-400020.

Vs. M/s Purvankara Projects  
Ltd., 130/1, Ulsoor Road,  
Bangalore-560042

**Appellant**

**PAN No. AAACP2550R  
Respondent**

**ITA No. 6470/MUM/2017  
Assessment Year: 2013-14**

**&**

**ITA No. 6469/MUM/2017  
Assessment Year: 2014-15**

DCIT(CC)-1(2), Room No.  
906, 9<sup>th</sup> floor, Old CGO Bldg.  
Annex Bldg., M.K. Road,  
Mumba-400020.

Vs. M/s Purvankara Projects  
Ltd., 130/1, Ulsoor Road,  
Bangalore-560042

**Appellant**

**PAN No. AAACP2550R  
Respondent**

Revenue by : Mr. Awungshi Gimson, CIT DR  
Assessee by : Mr. Rajeev Wagley, AR

Date of Hearing : 26/03/2019  
Date of pronouncement: 27/03/2019

ORDER

PER N.K. PRADHAN, AM

The captioned appeals filed by the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-47 [in short 'CIT(A)'], Mumbai and arise out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act'). As common issues are involved, we are proceeding to dispose them off through a consolidated order for the sake of convenience. Facts being identical, we begin with the AY 2012-13.

2. The ground of appeal reads as under:

Whether on facts and circumstances of the case the Ld. CIT(A) was justified in directing the Assessing Officer to allow deduction u/s 80IB on the profits from the eligible units only without netting off the losses of other eligible units without appreciating the fact that in view of the provisions of section 80B(5), r.w.s. 80A(1), the deduction u/s 80IB(10) shall be allowed from its gross total income arrived at after adjusting the losses of other units against the profits derived from an "industrial undertaking", as held by the Apex Court in the case of Synco Industries Ltd. (2008) 168 Taxman 224 (SC).

3. Briefly stated, the facts are that the assessee, a builder and developer, filed its return of income for the AY 2012-13 on 28.09.2012 declaring total income of Rs.56,70,07,330/- after claiming deduction of Rs.14,35,22,600/- u/s 80IB of the Act. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee had claimed the above deduction of Rs.14,35,22,600/- u/s 80IB without setting off losses of Rs.90,91,78,749/- from other eligible housing projects. In reply to a query raised by the AO, the assessee filed a reply

dated 26.03.2014, which has been extracted at para 3.1 (page 2-3) of the assessment order. However, the AO was not convinced with the said reply of the assessee and relying on sub-section (10) of section 80IB and the decision of the ITAT 'C' Bench, Chennai in *DCIT v. Macro Marvel Projects Ltd.* (ITA No. 116/Mds/2011 dated 27.11.2012), disallowed the claim of deduction u/s 80IB(10) made by the assessee.

4. In appeal, the Ld. CIT(A) referred to the order of her predecessor for AYs 2010-11 & 2011-12, wherein the issue was decided in favour of the assessee, following the order of the Tribunal in the case of *Meera Cottons & Synthetics Mills Ltd. v. ACIT* (29 SOT 177) and *Krupa Chatons Mfg. Co. Pvt. Ltd. v. DCIT* (ITA No. 658/Mum/2012 dated 01.01.2014). Therefore, the Ld. CIT(A) directed the AO to allow the deduction u/s 80IB of profits of eligible units only without netting off the same against the losses.

5. Before us, the Ld. DR refers to the order of the Tribunal dated 27.10.2016 in assessee's own case for the AY 2010-11 (ITA No. 1313/Mum/2015) and AY 2011-12 (ITA No. 1314/Mum/2015) and submits that facts being identical, the matter may be restored to the file of the AO with a direction to find out factual aspects by examining the books of accounts, materials, information and decide the issue in accordance with the decisions rendered in the case of *Viswas Promoters* (214 Taxman 525) (Mad) and *CIT v. Vandana Properties* (2013) 353 ITR 96 (Bom).

Further the Ld. DR relies on the decision in *Macro Marvel Projects Ltd.* (supra).

6. On the other hand, the Ld. counsel of the assessee submits that the respondent had filed individual Form 10CCB for each eligible units and had maintained separate books of accounts for each project. It is further stated that the audit report tendered by the assessee in Form 10CCB clearly showed that all the housing projects undertaken were stand-alone projects. Also it is stated by him that the observations made by the AO in para 3.2.6 of his assessment order dated 28.03.2014 that no separate accounts have been maintained for various projects are totally baseless.

Further the Ld. counsel, in support of his contention that deduction u/s 80IB needs to be granted in respect of profit making units without setting off the losses of loss making units, relies on the decision in *Meera Cotton & Synthetic Mills* (supra), *Krupa Chatons Manufacturing Co. P. Ltd.* (supra), *CIT v. Sona Koyo Steering Systems Ltd.* (2010) 321 ITR 463 (Del), *CIT v. Modi Zerox Ltd.* (2012) 344 ITR 411 (All), *Punit Construction Co. v. JCIT* (ITA No. 6337/Mum/2014) for AY 2011-12 dated 21.02.2018.

Thus the Ld. counsel submits that the order passed by the Ld. CIT(A) be confirmed.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

As mentioned earlier, the Ld. CIT(A) following the order of her predecessor for the AYs 2010-11 & 2011-12, allowed the appeal filed by the assessee with a direction to the AO to allow deduction u/s 80IB on profits of eligible units only without netting off the same against the

losses. In appeal filed by the Revenue against the said order of the Ld. CIT(A), the ITAT 'C' Bench, Mumbai *vide* order dated 27.10.2016 in assessee's own case for AY 2010-11 (ITA No. 1313/Mum/2015) and AY 2011-12 (ITA No. 1314/Mum/2015) held as under:

"9. We heard Ld D.R. We notice that the AO has treated all the projects as belonging to one undertaking on the reasoning that no separate accounts have been maintained and further the assessee was not able to show that there was no interlacing and interdependence. The Ld A.R submitted that the above said observations are against the facts available with the assessee, meaning thereby, these factual aspects require verification at the end of the AO. Accordingly we set aside the order passed by Ld CIT(A) on this issue in both the years under consideration and restore the same to the file of the AO with the direction to find out factual aspects by examining the books of accounts, materials, information and explanations of the assessee and decide the issue in accordance with the decision rendered in the case of Viswas Promoters (*supra*) and Vandana Properties (*supra*)."

7.1 In view of the facts and circumstances of the case delineated hereinabove, we set aside the order of the Ld. CIT(A) and direct the AO to pass an order afresh keeping in mind the above observation of the Tribunal. We direct the assessee to file the relevant documents/evidence before the AO. Needless to say, the AO would give reasonable opportunity of being heard to the assessee before finalizing the assessment order.

7.2 We also find that while passing the appellate order for AYs 2013-15 & 2014-15, the Ld. CIT(A) has followed the order of his predecessor for AYs 2010-11 and 2011-12.

Facts being identical, our decision for the AY 2012-13 applies *mutatis mutandis* to AYs 2013-14 & 2014-15.

8. In the result, the appeals are allowed for statistical purposes.

**Order pronounced in the open Court on 27/03/2019.**

Sd/-  
(RAVISH SOOD)  
JUDICIAL MEMBER

Mumbai;

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Dated: 27/03/2019

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**