

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos.2898 to 2900/PUN/2016
निर्धारण वर्ष / Assessment Years : 2007-08, 2008-09 & 2010-11

The Dy. Commissioner of Income Tax,
Circle – 3, Pune

.... अपीलार्थी/Appellant

Vs.

M/s. Samarthshree Promoters & Developers,
1102, A-2, Lakaki Road,
Model Colony, Shivajinagar,
Pune - 411016

.... प्रत्यर्थी / Respondent

PAN: ABBFS8220J

अपीलार्थी की ओर से / Appellant by : Shri Sanjeev Ghei
प्रत्यर्थी की ओर से / Respondent by : Shri Anish Dhoble (Assessee)

सुनवाई की तारीख / Date of Hearing : 26.03.2019	घोषणा की तारीख / Date of Pronouncement: 04.04.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of three appeals filed by Revenue are against consolidated order of CIT(A), Pune-10, Pune, dated 02.09.2016 relating to assessment years 2007-08, 2008-09 and 2010-11 against respective orders passed under section 143(3) r.w.s. 147 / 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals filed by Revenue relating to the same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to

adjudicate the issue, reference is being made to the facts and issues in ITA No.2898/PUN/2016, relating to assessment year 2007-08.

3. The Revenue in ITA No.2898/PUN/2016, relating to assessment year 2007-08 has raised the following grounds of appeal:-

1. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing claim of deduction u/s 80IB(10) of the I.T. Act of assessee on pro-rata basis, as the Income Tax Act does not allow for deduction u/s 80IB(10) on pro-rata basis rather it talks about the project as a whole.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing deduction u/s 80IB(10) claimed by the assessee though he had not completed project within stipulated time period as prescribed by the provisions of section 80IB(10).*

4. The assessee has moved an application stating that the managing partner and their regular income tax consultant had expired. The signatory is the son of managing partner and only male member of the family and hence, he sought time for arguing the appeal. However, on perusal of record, we find that the issue raised in the present appeal is squarely covered. Hence, adjournment application is refused and we proceed to decide the present appeals after hearing the learned Departmental Representative for the Revenue.

5. Briefly, in the facts of the case, the assessee firm was the promoter and developer of projects. The assessee for the year under consideration had claimed deduction under section 80IB(10) of the Act on plot of land admeasuring 5216.61 sq.mtrs. The contention of assessee before the authorities below was that it had complied with all the conditions of section 80IB(10) of the Act and hence, was entitled to claim the aforesaid deduction. First commencement certificate was received by assessee on 11.07.2005 and

the project had to be completed as per section before 31.03.2011. The assessee claims to have completed the project before the said date and also claims to have filed an application for completion certificate before the PMC. Each of the flat built in the said project was with built up area of less than 1500 sq.ft. The Assessing Officer noted that as per revised return of income filed by assessee, it had claimed deduction under section 80IB(10) of the Act at ₹ 1,01,48,527/- as against gross total income of ₹ 1,07,05,781/-. The Assessing Officer during the course of assessment proceedings made certain enquiries through the Inspector as well as with PMC and as per information received, the project in question was incomplete as on 31.03.2011. It also came to his notice that the assessee had wrongly stated that its application for completion certificate to PMC was made on 30.03.2011, whereas the PMC certificate states the date to be 01.04.2011. Accordingly, the deduction claimed under section 80IB(10) of the Act was denied to the assessee in totality.

6. Before the CIT(A), written submissions were filed by the assessee, which are reproduced in the order of CIT(A). The CIT(A) first decides the issue of 147 and holds the same to be against assessee. Then, coming to the issue on merits, the CIT(A) notes that necessary approval to commence the project was received by assessee on 17.05.2005 and the same had to be completed within period of five years from the end of financial year in which the housing project was approved by local authority. The CIT(A) then, refers to various conditions to be fulfilled and the various amendments made to the section. Then, he refers to the factual aspects of the case before him at page 24 onwards. The CIT(A) notes that the Assessing Officer has accepted the fact that the assessee had fulfilled all other conditions except the date of completion of project. He first refers to the letter of local authority, under which the

assessee had made application for obtaining completion certificate after 31.03.2011, which was ultimately granted on 27.07.2012. The second aspect which was taken note by the CIT(A) was that after completion date, the assessee had incurred certain expenditure on the said project, which proved that project was not complete. The CIT(A) noted that expenses related to building-B under the heads viz. labour charges, material purchased, etc. The CIT(A) however, took note of the copy of application for occupancy certificate filed during appellate proceedings, which was submitted before the Assistant Engineer, PMC, wherein it was clearly mentioned that application dated 25.03.2011 was submitted in the said office on 30.03.2011 i.e. well within stipulated date. The scanned copy of letter is reproduced at pages 27 and 28 of appellate order. The CIT(A) then observes that the assessee had submitted its application within time frame, however, due to construction of seven additional floors without approval in building-B, the completion certificate was issued only on 27.07.2012 after the payment of compounding fees by the assessee to local authority. Regarding supply of labour and material, it was explained that expenses incurred after 31.03.2011 were not on the construction of building, but it was on club house, pavement block, swimming pool and temple, etc. The Assessing Officer on the other hand, only referred to the date of supply of labour and other material but no specific enquiry was carried out to ascertain as to where those items were ultimately utilized. Further, from the documents submitted for completion certificate, the CIT(A) noted that 11 floors on building-A and 4 floors on building-B were completed within stipulated date. Hence, he came to a finding that housing project as originally approved was completed prior to 31.03.2011. He also noted that there were additional seven floors which were constructed without prior approval in building-B of the project and he held that the assessee was entitled to prorata deduction, following

various orders of Pune Bench of Tribunal. He also noted that approval was belatedly granted due to construction of certain additional floors, for which the assessee paid compounding fees and in such circumstances, the Assessing Officer was held to be not correct in denying the entire claim of deduction under section 80IB(10) of the Act. He held that denial should be confined to profits being earned on the sale of additional seven floors constructed in building-B of approved project. Accordingly, the Assessing Officer was directed to exclude profits on prorata basis on seven additional floors in building-B and allow the claim of deduction on remaining profits.

7. The Revenue is in appeal against the order of CIT(A) in this regard.

8. From the perusal of above said facts and circumstances, it is apparent that where the assessee had commenced construction of project on 11.07.2005 and had completed the project by 31.03.2011, against which application for issue of completion certificate was also filed before the PMC, merely because the completion certificate was not given to assessee till 2012, can the assessee be denied the deduction claimed on prorata basis on the completed units in the approved housing project. Undoubtedly, the housing project was approved and certain floors were approved to be constructed. The assessee got approval to construct in July, 2005 and claims to have completed the same within stipulated time by March, 2011. In addition, the assessee also constructed additional seven floors in building-B of the project without any approval from the authorities. When the originally sanctioned units were completed by assessee and it sought completion certificate, the same was not issued by PMC as the assessee had violated the provisions of section 80IB(10) of the Act and constructed additional seven floors in building-B without any approval; against

the same on a later date, the assessee paid compounding fees and even those floors were approved and completion certificate of the building-B was issued in 2012. In such circumstances, the assessee is not entitled to claim any benefit of deduction under section 80IB(10) of the Act in respect of said additional seven floors in building-B as the same were constructed without any approval. However, for the balance project, which was constructed as per approved building plan and within stipulated time provided under section 80IB(10) of the Act, the claim of assessee cannot be denied. The CIT(A) has categorically noted the fact that the assessee had applied for completion certificate vide its application dated 25.03.2011, which was submitted in the office of PMC on 30.03.2011 i.e. well within stipulated date. Though the Assessing Officer had pointed out that the said application was submitted on 01.04.2011, but necessary verification exercise was carried out by the CIT(A) and information was received from the Assistant Engineer, PMC, Pune and the copy of said application for occupancy certificate is scanned and placed at pages 27 and 28 of the appellate order. Hence, it is clearly proved that the application was filed within time in respect of 11 floors of building-A and 4 floors of building-B. Once the same have been completed within stipulated time, merely because the completion certificate has not been received, cannot result any denial of claim of deduction under section 80IB(10) of the Act in respect of completed units. The assessee is entitled to the prorata deduction in this regard. However, the assessee is not entitled to claim any deduction under section 80IB(10) of the Act in respect of additional seven floors in building-B, which were constructed without any approval from PMC, the same were approved by paying compounding fees and any issue connected with the same is not before us and hence, we uphold the order of CIT(A) in allowing the claim of assessee in

respect of proata deduction of the completed units. The grounds of appeal raised by Revenue are thus, dismissed.

9. The facts and issues in ITA Nos.2899/PUN/2016 & 2900/PUN/2016 are identical to the facts and issues in ITA No.2898/PUN/2016 and our decision in ITA No.2898/PUN/2016 shall apply *mutatis mutandis* to ITA Nos.2899/PUN/2016 & 2900/PUN/2016.

10. In the result, all the appeals of Revenue are dismissed.

Order pronounced on this 4th day of April, 2019.

Sd/-
(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 4th April, 2019.

GCVSR

Sd/-
(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A), Pune-10, Pune;
4. The Pr.CIT-2, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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