

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**ITA No. 329/Hyd/2018  
Assessment Year: 2013-14**

M/s. Modi Shelters Pvt vs. Income Tax Officer  
Ltd., Ashoka Hitech Ward – 16(4),  
Chambers, Hyderabad.  
Hyderabad.

PAN – AADCM8355N

(Appellant)

(Respondent)

Assessee by : Shri S. Rama Rao  
Revenue by : Smt. Komali Krishna

Date of hearing : 07-03-2019  
Date of pronouncement : 13-03-2019

**ORDER**

**PER D.S. SUNDER SINGH, A.M:**

This appeal is filed by the assessee against the order of the CIT(A)-4, Hyderabad in Appeal No.0102/2016-17/ITO,W-16(4)/CIT(A)-4/hyd/17-18 dated 21.11.2017.

2. The assessee filed the grounds of appeal along with the Form – 36 and subsequently modified the grounds during the appeal hearing on 07/03/2019 and requested to take up the modified grounds instead of original grounds filed along with the appeal Memo. After hearing both the parties we admit the modified grounds for adjudication. In the modified grounds of appeal, the assessee raised 5 grounds in total, all the grounds of appeal are related to

the rejection of deduction 80IB(10) of the Income tax Act (in short 'the Act') in respect of Palm springs Project Phase-II.

2.1 Briefly stated the facts are that the assessee filed the return of income declaring total income of Rs. Nil as per the normal provisions, and the book profit u/s 115JB of the Act at Rs. 78,80,259/-. The assessment was completed u/s 143(3) of the Act on total income of Rs. 80,99,370/- under normal provisions and computed the book profit at Rs. 78,80,259/- u/s 115JB of the Act. In the return of income filed by the assessee, the assessee claimed the deduction u/s 80IB of the Act in respect of the following projects:

<i>Sl. No.</i>	<i>Name of the project</i>	<i>Area</i>	<i>No. of Houses</i>
1	<i>Emerald Park</i>	<i>Annojiguda</i>	<i>148</i>
2	<i>Emerald Park Annexe</i>	<i>Annojiguda</i>	<i>104</i>
3	<i>Palm Spring Phase-II</i>	<i>Kompally</i>	<i>63</i>

2.2 The A.O disallowed the deduction claimed u/s 80IB(10) of the Act for all the projects mentioned above. In respect of Emerald Park and Emerald Park Annexe the A.O followed orders of this Tribunal in assessee's own case for the A.Ys 2008-09, 2009-10 & 2010-11. There is no dispute with regard denying of deduction in respect of Emerald Park and Emerald Park Annexe.

2.3 In respect of Palm spring Phase - II, the A.O disallowed the deduction u/s 80IB of the Act for the reason that the approval for the phase- I was obtained on

03.05.2005 and the sanction for Phase-II project was obtained on 07.05.2008. The AO observed that in sanction letter for Phase-II there was no mention of earlier sanction of Phase-I. Hence held that the Phase -II is no way connected to the phase-I and it was not in continuation of earlier sanction. Since approval of sanction was obtained beyond the time limit provided u/s 80IB the AO disallowed the deduction claimed u/s 80IB(10), and added back to the income.

3. On appeal the the Ld.CIT(A) dismissed the appeal of the assessee following the order of this Tribunal in assessee's own case for the A.Ys 2009-10 and 2010-11. Aggrieved by the order of the Ld. CIT(A) the assessee is an appeal before the Tribunal. All the grounds of appeal raised by the assessee in modified grounds of appeal are related to the deduction claime u/s 80IB of the Act, in respect of Palm Springs Phase – II project.

4. During the appeal hearing the Ld. AR submitted that the ITAT rejected the assessee's claim of deduction u/s 80IB(10) in respect of Emerald Park and Emerald Park Annexe, whereas in the case of Palm Spring the assessee satisfied all the conditions for grant of registration u/s 80IB(10) of the Act and Palm Springs is not an issue in the said appeal for the A.Ys 2009-10 and 2010-11. The Ld.AR further submitted that Phase – II is an extension of Phase – I and not an independent project. For Phase-I, sanction was obtained on 03.05.2005 and for Phase – II on

07.05.2008. The assessee has constructed two separate buildings with common compound wall and in the same stretch of the land with common facilities and the same survey No. Further, the Ld. AR also submitted a copy of the certificate issued by O/o the Gram Panchayat, Kompally, Quthbullapur Mandal wherein the Executive Officer certified that both the sanctions dated 03.05.2005 and 07.05.2008 and the construction of apartments were completed 02.03.2011. The certificate issued by the Executive Officer, Gram Panchayat shows that both the apartments are constructed in the same compound and same survey number and accordingly argued that the phase-II is continuation of phase - I project and merely because of the executive officer, failed to mention the extension of project in occupancy certificate dt 02.03.2011, it cannot be inferred adversely against the assessee for denying the deduction u/s 80IB(10). The Ld. AR further submitted that in the immediately preceding assessment year the CIT(A) has allowed the deduction u/s 80IB(10) of the Act for Palm Spring Project Phase - II in its order in Appeal No.0337/2013-14/ITO,Cir-16(1)/CIT(A)-4/hyd/14-15 dated 12.02.2015. Therefore Ld. AR requested to remit the matter back to the file of the CIT(A) to verify the facts and decide the issue afresh on merits.

5. On the other hand, the Ld. DR fairly conceded for remitting the matter back to the file of the Ld.CIT(A).

6. We have heard both the parties and perused the material available on record. The only issue involved in the instant case is the allowance of deduction u/s 80IB(10) of the Act in respect of Palm Spring Project Phase – II. According to the Ld. AR the Palm Spring Project Phase - II is an extension of Palm Spring Project Phase -I. The sanction was obtained for Phase – I on 03.05.2005 and in continuation of project-I the sanction was obtained on 07.05.2008 for phase – II. As observed from the assessment order the A.O has rejected the deduction u/s 80IB of the Act, since, the Executive Officer, Gram Panchayat did not mention the fact with regard to extension of the project and sanction dated 07.05.2008 in occupancy certificate. According to the assessee the second phase is in continuation of first phase and both the buildings are constructed at one stretch of land with the common compound wall and common facilities. Assessee placed certificate from the Executive Officer, Gram Panchayat certifying that both the buildings are constructed on the same land on same survey number and occupancy certificates were issued separately. The certificate dated 13.11.2015 was not available to the A.O or the Ld.CIT(A) at the time of disposal of the appeal. The Ld. CIT(A) in the immediately preceding assessment year i.e 2011-12 in the assessee's own case allowed the deduction u/s 80IB(10) of the Act holding that the Phase – II is an extension of project of Phase – I and both the projects of Palm Spring Project are treated as a single project. For ready reference we extract relevant part of the order of the CIT(A) in para 5.1 which reads as under:

*“5.1 With regard to the claim regarding the Palm Spring Projects, the claim of the assessee is that the project is executed in 2 phases it is based on the fact that the survey number of land of both the approvals is same. Further, the entire area is encircled by a compound wall and it is one and the same project. The utilities are also common for the both phases. It is seen that the claim of the assessee regarding deduction with reference to Palm Spring Project was rejected in earlier years on the grounds of each unit exceeding 1500sq. ft. on inclusion of terrace and portico as in the case of Emerald Park Projects. There is no discussion in the order separately regarding this project. But it is seen that this project consists of apartments which do not have any terrace and portico for each units. As both the phase of Palm Spring Project have common areas with common compound & wall, the same is treated as single project and the assessee is eligible for deduction u/s 80IB(10) in respect of profits of this project. The assessee’s ground is allowed to that extent.*

6.1 The Ld. CIT(A) has simply relied on the decision of the Hon’ble ITAT in which case the Palm Spring Project Phase – II was not an issue and the issue was in respect of Emerald Park and Emerald Park Annexe but not the Palm Spring Project Phase-I&II. Therefore in the interest of the justice we are of the considered opinion that the issue should be remitted back to the file of the CIT(A) to verify the complete facts of the case and decide the issue afresh on merits taking into consideration of the certificate furnished by the assessee from the Executive Officer Gram Panchayat and the decision of the Ld.CIT(A) in the assessee’s own case for the A.Y 2011-12 and satisfaction of the conditions laid down u/s 80IB(10) of the Act and decided the issue afresh on merits as per law. It is needless to say that the Ld.CIT(A) has to give opportunity to the assessee to defend its case. Accordingly, the appeal of the assessee is allowed for statistical purposes.

7. In the result, appeal filed by the assessee is allowed for statistical purposes..

Pronounced in the open Court on 13<sup>th</sup> March, 2019

Sd/-  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(D.S. SUNDER SINGH)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 13<sup>th</sup> March, 2019.

KRK

- 1 Modi Shelters Pvt Ltd., Ashoka Hitech Chambers, 8-2-120/76/16,17, Road No. 2, Banjara Hills, Hyderabad.
- 2 ITO, Ward – 16(4), Hyderabad.
- 3 The CIT(A)-4, Hyderabad.
- 4 The Pr. CIT-4, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File