

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

श्री आर. एस. स्याल, उपाध्यक्ष एवं  
श्री विकास अवास्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.181 & 199/PUN/2017  
निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

ITO, Ward-5 (1),  
Pune

Vs.

M/s. Shah Bafna Associates,  
Shop No.13 & 14,  
Ashwini Paradise,  
Bibwewadi, Lulla Nagar Road,  
Pune – 411 037

PAN : ABRFS4866P

(Appellant)

(Respondent)

Assessee by  
Revenue by

Shri Prayag Jha  
Shri M.K. Verma

Date of hearing 27-06-2019  
Date of pronouncement 28-06-2019

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the Revenue relate to the assessment years 2012-13 & 2013-14. Since common issue is raised in these two appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. The only issue raised herein is against the allowing of deduction u/s.80IB(10) of the Income-tax Act, 1961 (hereinafter also called 'the Act') on pro-rata basis.

3. Briefly stated, the facts of the case for the A.Y. 2012-13 are that the assessee filed its return claiming deduction u/s.80IB(10) of the Act for a sum of Rs.3.52 crore and odd. During the course of assessment proceedings, the Assessing Officer (AO) observed that the project was not a 6 floor project but each wing had 10 or 12 floors and 4 flats on each floor, whereas the assessee had taken permission and completion as on 31-03-2012 for only 72 flats. Considering the relevant provisions, the AO disentitled the assessee to the entire amount of deduction claimed u/s.80IB(10) of the Act. The Id. CIT(A) held in para No.7.3.1. of the impugned order that the project was partly completed and hence, the assessee was entitled to proportionate/pro-rata deduction u/s.80IB(10) for the 72 flats constructed by it in A, B and C wings prior to 31-03-2012. He further observed that the assessee did not claim any deduction u/s.80IB(10) in respect of the flats which were sanctioned after 31-03-2012. The Revenue is aggrieved

by the finding given by the ld. CIT(A). Facts of the appeal for A.Y. 2013-14 are admittedly similar to those of A.Y. 2012-13 but for the difference in the amount of deduction.

4. We have heard both the sides and gone through the relevant material on record. The factual recording made by the ld. CIT(A) that the assessee did not claim any deduction in respect of the flats which were not completed upto the year ending has not been controverted by the ld. DR. The ld. AR submitted that the issue raised in these appeals is no more *res integra* in view of an order passed by the Pune Benches of the Tribunal in the case of DCIT Vs. M/s. Om Associates (ITA No.1031/PUN/2016). Vide order dated 06-06-2018, the Tribunal has held the assessee to be entitled to pro-rata deduction u/s.80IB(10) in respect of the completed buildings. The ld. DR fairly conceded that the facts and circumstances of the instant appeals are *mutatis mutandis* covered by the aforesaid order of the Tribunal which, has been rendered in favour of the assessee. Respectfully following the precedent,

we approve the view canvassed by the Id. CIT(A) in the impugned orders.

5. In the result, the appeals are dismissed.

Order pronounced in the Open Court on 28<sup>th</sup> June, 2019.

Sd/- (VIKAS AWASTHY) न्यायिक सदस्य /JUDICIAL MEMBER	Sd/- (R.S.SYAL) उपाध्यक्ष/ VICE PRESIDENT
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पुणे Pune; दिनांक Dated : 28<sup>th</sup> June, 2019  
सतीश

**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 (Appeals)-4, Pune
4. The Pr.CIT-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“बी” / DR ‘B’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	27-06-2019	Sr.PS
2.	Draft placed before author	27-06-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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